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Washington, Friday, June 20, 1952

TITLE 3—THE PRESIDENT

PROCLAMATION 2978

NATIONAL DAY OF PRAYER, 1952

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS from the earliest days of our history our people have been accustomed to turn to Almighty God for help and guidance; and

WHEREAS in times of national crisis when we are striving to strengthen the foundations of peace and security we stand in special need of divine support; and

WHEREAS the Congress, by a joint resolution approved on April 17, 1952 (66 Stat. 64), has provided that the President "shall set aside and proclaim a suitable day each year, other than a Sunday, as a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation"; and

WHEREAS I deem it fitting that this Day of Prayer coincide with the anniversary of the adoption of the Declaration of Independence, which published to the world this Nation's "firm reliance on the protection of Divine Providence":

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim Friday, July 4, 1952, as a National Day of Prayer, on which all of us, in our churches, in our homes, and in our hearts, may beseech God to grant us wisdom to know the course which we should follow, and strength and patience to pursue that course steadfastly. May we also give thanks to Him for His constant watchfulness over us in every hour of national prosperity and national peril.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 17th day of June in the year of our Lord nineteen hundred and fifty-two, [SEAL] and of the Independence of the United States of America the one hundred and seventy-sixth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Secretary of State.

[F. R. Doc. 52-6821; Filed, June 19, 1952; 9:44 a. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 2—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM

COMPETITION RESTRICTED TO VETERANS

Effective July 25, 1952, paragraph (b) of § 2.102 is revoked, and the reference to this paragraph in paragraph (c) (1) of that section is also revoked. As amended, paragraph (c) (1) will read as follows:

§ 2.102 *Competition restricted to veterans.* * * *

(c) (1) A position, examination for which has been restricted to veterans under paragraph (a) of this section, may not be filled by appointment, reappointment, reinstatement, promotion, demotion, transfer, or reassignment of a non-veteran from outside the organizational entity in which the position exists, if there is a veteran in the employ of such entity in the local area who is qualified and available for promotion or reassignment to the position, or if there is a total of three or more veterans elsewhere who are qualified and available for an appointment of equal tenure.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR 1947 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] ROBERT RAMSPECK,
Chairman.

[F. R. Doc. 52-6742; Filed, June 19, 1952; 8:46 a. m.]

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FEDERAL REGISTER

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PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

PART 8—PROMOTION, DEMOTION, REASSIGNMENT, AND TRANSFER OF PERMANENT EMPLOYEES

MISCELLANEOUS AMENDMENTS

1. Effective upon publication in the FEDERAL REGISTER, subparagraph (14) is added to § 6.123 (h) as follows:

§ 6.123 *Federal Security Agency.*

* * *

(h) *Public Health Service.* * * *

(14) Physical therapy interns (student physical therapists), occupational therapy interns (student occupational therapists), and hospital administration students. Appointments to these positions will not extend beyond four months.

2. Effective upon publication in the FEDERAL REGISTER, subparagraph (11) is added to § 6.155 (c) as follows:

§ 6.155 *Economic Stabilization Agency.* * * *

(c) *Office of Wage Stabilization.*

* * *

(11) Chairman and Members of the Health and Welfare Committee of the Wage Stabilization Board.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR 1947 Supp. E. O. 9973, June 25, 1948, 13 F. R. 3600; 3 CFR 1948 Supp.)

3. Effective June 5, 1952, §§ 8.107 and 8.109, and paragraph (a) of § 8.110 are amended to read as follows:

§ 8.107 *Promotions, demotions, reassignments, and transfers without reemployment rights.* (a) All promotions after September 1, 1950, shall be indefinite except that:

(1) An agency may promote any employee permanently to a position if such promotion will not increase the number of employees holding permanent positions in the grade of such position in such agency above the number in such grade in such agency prior to September 1, 1950.

(2) Permanent promotions may be made to any position in a category for which the Civil Service Commission authorizes permanent appointments.

(b) All reassignments of an employee on and after December 1, 1950, to positions above the grade (or level) which he last occupied on a permanent basis shall be indefinite unless he is made permanent at that grade (or level) under one of the exceptions in paragraph (a) of this section. All reassignments within his last permanent grade (or level) may be either permanent or indefinite in the discretion of the head of the agency, except that any reassignment to the position last held on a permanent basis shall be permanent.

(c) All demotions of an employee on and after December 1, 1950, to positions above the grade (or level) which he last occupied on a permanent basis shall be indefinite unless he is made permanent at that grade (or level) under one of the exceptions in paragraph (a) of this section. All demotions to positions below his last permanent grade (or level) shall be permanent. All demotions to positions within his last permanent grade (or level) may be either permanent or indefinite in the discretion of the head of the agency, except that a demotion to the position last held on a permanent basis shall be permanent.

(d) The transfer of a permanent employee from one agency to another shall be permanent. However, when such transfer is to a position above the grade (or level) the employee last occupied on a permanent basis, his occupancy of the higher grade position shall be on an indefinite basis, unless the promotion is made permanent under one of the exceptions in paragraph (a) of this section.

* * * * *

§ 8.109 *Restrictions on promotion, transfer or appointment to a higher grade, and reassignment to a different line of work*—(a) *Reassignment and promotion after competitive appointment.* No person shall be reassigned to a different line of work, promoted, transferred or appointed at a higher grade or in a different line of work in the same grade within three months after his last competitive appointment under § 2.113 or § 2.115 (a) or (b) of this chapter.

(b) *Application of the following paragraphs.* (1) The restrictions on promotion in the following paragraphs apply to transfer to a higher grade, and appointment and reemployment at a higher grade within one year after separation from employment of an indefinite or permanent nature.

(2) These restrictions apply when both the position last held and the position being filled are subject to the Classification Act of 1949, as amended. However, they do not apply when the position last held is outside the competitive service and in the legislative or judicial branches of the government. The restrictions apply to movements from positions not subject to the Classification Act to positions subject to the act only if the employee has held a position subject to the act within the preceding year.

(3) The periods of service required by paragraphs (c), (d), and (f) of this section shall include all service at the appropriate or higher level in the Federal civilian service. However, when two periods of service under the Classification Act are interrupted for less than one year by other service, such latter service shall be counted as a continuation of the prior service in the position subject to the Classification Act.

(c) *Promotions to positions at GS–12 or above.* An employee may be promoted to a position at GS–12 or above after he has served one year at the next lower grade.

(d) *Promotions to positions at GS–6 through GS–11.* (1) An employee may be promoted to a position at GS–6 through GS–11 which is in a line of work properly classified at two-grade intervals after he has served one year in a position two grades lower.

(2) An employee may be promoted to a position at GS–6 through GS–11 which is in a line of work properly classified at one grade intervals after he has served one year at the next lower grade.

(e) *Promotions to positions at GS–5 or below.* An employee may be promoted to a position at GS–5 or below which is not more than two grades above the lowest grade he held within the past year under permanent or indefinite appointment. However, an employee may be promoted to any grade at GS–5 or below which he previously held or to which he could have previously been promoted under this paragraph.

(f) *Normal line of promotion.* An employee of the agency who has one year of service two grades lower than the position being filled may, with the prior approval of the Commission, be promoted without regard to the restrictions of paragraphs (c) and (d) of this section if there is no position in the normal line of promotion at the next lower grade.

(g) *Training agreements.* The restrictions of this section shall not apply to any employee who is being promoted in accordance with a training agreement which has been approved by the Commission. Promotions of more than two grades in one year may not be made solely on the basis of a training agreement or series of training agreements.

(h) *Reduction in force.* The restrictions in this section shall not apply to any person who is being advanced to any grade or level up to that from which he had ever been demoted or separated by any agency because of reduction-in-force.

(i) *Persons within reach on register.* The restrictions of this section shall not apply to any person who is within reach on a civil service register for competitive appointment to the position to be filled.

(j) *Undue hardship or inequity.* In order to avoid undue hardship or inequity, the Commission may when requested by the head of the agency involved authorize promotions in individual cases of meritorious nature without regard to the restrictions of this section.

§ 8.110 *Tenure after change of position.* (a) The promotion, demotion, or reassignment of a permanent employee shall not change his status as a permanent employee of the agency. A permanent employee transferred from one agency to another, shall have the status of a permanent employee in the new agency at the grade or level of his permanent position in the agency from which transferred, unless he is transferred to a higher grade and the promotion is made permanent under one of the exceptions in paragraph (a) of § 8.107.

However, when the position to which transferred is in a lower grade or level than such permanent position, he shall have the status of a permanent employee in the new agency at the grade or level to which transferred. At the time he leaves his permanent position the agency shall record in his Official Personnel Folder sufficient information to identify clearly the position he last held on a permanent basis.

* * * * *

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] ROBERT RAMSPECK,
Chairman.

[F. R. Doc 52-6743; Filed, June 19, 1952; 8:47 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 912—HANDLING OF MILK IN DUBUQUE, IOWA, MARKETING AREA

ORDER AMENDING ORDER, AS AMENDED

§ 912.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order; and all previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Supps., 900.1 et seq.), a public hearing was held at Dubuque, Iowa, on November 28, 1951, upon a proposed amendment to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Dubuque, Iowa, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is hereby found that:

(1) The said order, as hereby amended, and all of the terms and conditions of said order as hereby amended, will tend to effectuate the declared policy of the act.

(2) The parity prices for milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for such milk and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as hereby amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than July 1, 1952. Any delay beyond July 1, 1952, in the effective date of this order amending the order, as amended, will seriously disrupt the orderly marketing of milk for the Dubuque, Iowa, marketing area. The changes effected by this order amending the order, as amended, do not require of persons affected, substantial or extensive preparation prior to the effective date. In view of the foregoing, it is hereby found that good cause exists for making this order effective July 1, 1952 (see sec. 4 (c), Administrative Procedure Act, 5 U. S. C. 1003 (c)).

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping the milk covered by this order amending the order, as amended, which is marketed within the Dubuque, Iowa, marketing area) of more than 50 percent of the milk which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order amending the order, as amended, is the only practical means pursuant to the declared policy of the act of advancing the interests of producers of milk which is produced for sale in the Dubuque, Iowa, marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, during the determined representative period (March 1952), were engaged in the production of milk for sale in the Dubuque, Iowa, marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Dubuque, Iowa, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Delete § 912.5 (a) (1) and substitute therefor the following:

(1) *Class I milk.* The price established per hundredweight of Class I milk under Order No. 44, as amended, regulating the handling of milk in the Quad Cities marketing area, minus 10 cents.

2. Revise the list of plants contained in § 912.5 (a) (2) (i) to read as follows:

Present Operator of Plant and Location

Amboy Milk Products Co., Amboy, Ill.
Borden Co., Dixon, Ill.
Borden Co., Sterling, Ill.
Carnation Co., Morrison, Ill.
Carnation Co., Oregon, Ill.
Carnation Co., Waverly, Iowa.
United Milk Products Co., Argo Fay, Ill.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Issued at Washington, D. C. this 17th day of June 1952, to be effective on and after the 1st day of July 1952.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 52-6774; Filed, June 19, 1952; 8:54 a. m.]

PART 983—TYPE 62 SHADE-GROWN CIGAR-LEAF TOBACCO GROWN IN DESIGNATED PRODUCTION AREA OF FLORIDA AND GEORGIA

SUBPART—CONTROL COMMITTEE RULES AND REGULATIONS

Correction

In F. R. Doc. 52-6615, appearing at page 5454 of the issue for Wednesday, June 18, 1952, the entry in the table of contents for § 983.130 should read:

983.130 Books, records and reports.

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

PART 109—PROTECTION AND WELFARE OF INDIVIDUALS

PART 112—LAW ENFORCEMENT

CROSS REFERENCE: For supersedure of §§ 109.9, 109.10, 109.11, and Part 112 of Title 22, see Part 136, *infra.*

[Dept. Reg. 108.154]

PART 136—NOTARIAL AND RELATED SERVICES

Part 136, Chapter I, Title 22 of the Code of Federal Regulations, is prescribed as follows: Part 136, as prescribed herein, supersedes §§ 109.9, 109.10, 109.11 and Part 112, Chapter I, Title 22 of the Code of Federal Regulations.

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AUTHORITY: §§ 136.1 to 136.64, 136.66 to 136.69 and 136.71 to 136.95 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. §§ 136.65 and 136.70 issued under sec. 1, 62 Stat. 836, sec. 303, 60 Stat. 1002; 22 U. S. C. 843, 18 U. S. C. Sup. 3496, E. O. 10307, Nov. 23, 1951, 16 F. R. 11907; 3 CFR, 1951 Supp. Statutory provisions interpreted or applied are cited to text in parentheses.

INTRODUCTION

§ 136.1 *Definitions.* (a) In the United States the term "notary" or "notary public" means a public officer qualified and bonded under the laws of a particular jurisdiction for the performance of notarial acts, usually in connection with the execution of some document.

(b) The term "notarial act" means an act recognized by commercial custom and general usage as pertaining to the office of a notary public. It includes the administration of oaths or affirmations, the taking of affidavits, acknowledgments, and depositions, the authentication of documents, and the certification of copies of documents.

(c) The term "notarial certificate" means a written statement attesting to the performance of a notarial act, executed by the notarial officer and either inserted on, or appended to, the notarized document.

§ 136.2 *Description of notarial function of the Foreign Service.* The notarial function of officers of the United States Foreign Service is similar to the function of a notary public in the United States and consists of the activities described in this part.

§ 136.3 *Jurisdiction of Foreign Service posts.* Where definite consular districts have been established, the geographic limits of the district determine the jurisdiction in notarial matters of the officers assigned to the Foreign Service post, i. e., the area in which notarial acts can be performed by the consular officer. (See § 136.41 (b) regarding the authentication of the seals and signatures of foreign officials outside the consular district.) As a rule, notarial services should be performed only at the office of the post. However, they may, when necessary, be performed elsewhere within the consular district, with the understanding that, in addition to the prescribed Foreign Service fees for such services, the expenses incurred by the notarizing officer in going to the place where the notarial service is performed and returning to his office will be borne by the interested party or parties. Within those national jurisdictions where no consular districts have been established, notarial services should be performed at the most accessible Foreign Service post.

§ 136.4 *Authority of officers of the Foreign Service under the Federal law.* (a) Section 1195, title 22 of the United States Code, requires every United States consular officer to perform notarial acts, upon request, "within the limits of his consulate." This provision is construed as mandatory with respect to notarial acts performed within the Foreign Service office but not with respect to notarial acts performed outside the Foreign Service office. In addition, section 1203, title 22 of the United States Code, authorizes every secretary of embassy or legation and every consular officer to perform notarial acts. Notarial acts should be performed, however, only if their performance is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the consular officer is stationed.

(b) These acts may be performed for any person regardless of nationality so long as the document in connection with which the notarial service is required is for use within the jurisdiction of the Federal Government of the United States or within the jurisdiction of one of the States or Territories of the United States. (However, see also § 136.6.) Within the Federal jurisdiction of the United States, these acts, when certified under the hand and seal of office of the notarizing officer are valid and of like force and effect as if performed by any duly authorized and competent person within the United States. Documents bearing the seal and signature of the notarizing officer are admissible in evidence within the Federal jurisdiction without proof of any such seal or signature being genuine or of the official character of the notarizing officer. (R. S. 1750, sec. 3, 34 Stat. 100; 22 U. S. C. 1203.)

(c) Every secretary of embassy or legation and every consular officer may perform notarial acts for use in countries occupied by the United States or under its administrative jurisdiction, provided

the officer has reason to believe that his notarial act will be recognized in the country where it is intended to be used. These acts may be performed for United States citizens and for nationals of the occupied or administered countries who reside outside such countries, except in areas where another government is protecting the interests of the occupied or administered country.

(d) Chiefs of mission, that is, ambassadors and ministers, have no authority under Federal law to perform notarial acts except in connection with the authentication of extradition papers (see § 136.40).

(e) Consular agents have authority to perform notarial services but acting consular agents do not.

§ 136.5 *Acceptability of notarial acts under state or territorial law.* The acceptability within the jurisdiction of a State or Territory of the United States of a certificate of a notarial act performed by an officer of the Foreign Service depends upon the laws of the State or Territory. Most States and Territories recognize the notarial acts of United States diplomatic or consular officers, whether such acts are performed for United States citizens or for aliens. However, some of the States and Territories have, by statute, specified the legal requirements which notarized documents or notarial certificates must meet. For this reason, before performing a notarial act for use in a State or Territory, an officer of the Foreign Service should, unless he is already certain of the provisions of the pertinent state or territorial law, consult the appropriate law digest to determine whether it may be expected that the certificate of his notarial act will be acceptable in the State or Territory. If, in a particular instance, no statutory provision on this point can be found, the applicant for the notarial service should be informed of that fact, preferably in writing, and a statement regarding the giving of this information should be entered in the Record of Fees.

§ 136.6 *Authority of officers of the Foreign Service under international practice.* Although such services are not mandatory, officers of the Foreign Service may, as a courtesy, perform notarial acts for use in countries with which the United States has formal diplomatic and consular relations. Generally the applicant for such service will be a United States citizen or a national of the country in which the notarized document will be used. The officer's compliance with a request for a notarial service of this type should be based on the reasonableness of the request and the absence of any apparent irregularity. When an officer finds it advisable to do so, he may question the applicant to such extent as may be necessary to assure himself

(a) That his notarial certificate may reasonably be expected to satisfy the legal requirements of the country in which the notarized document will be used;

(b) That the notarial service is legally necessary and cannot be obtained otherwise than through the United States diplomatic or consular officer without loss or serious inconvenience to the applicant; and

(c) That the notarial certificate will be used solely for a well-defined purpose, as represented by the applicant for the service. (See also § 136.4 (c) regarding notarial services for use in countries occupied by the United States or under its administrative jurisdiction.)

§ 136.7 *Responsibility of officers of the Foreign Service.* As indicated in §§ 136.4, 136.5 and 136.6, United States diplomatic officers, except chiefs of mission, as well as United States consular officers are generally recognized as having authority to perform notarial acts. However, since this is generally considered to be a consular function, United States diplomatic officers should not exercise this authority unless specifically required to do so by the laws of the jurisdiction where the notarized document will be used, or in the event that an officer with a consular title is not assigned to the post. At a diplomatic mission where an officer is assigned both in a diplomatic and consular capacity, he should perform notarial acts under his consular commission. For ease of reference, the term "consular officer" will be used in this part in discussing the notarial function of the Foreign Service.

GENERAL NOTARIAL PROCEDURES

§ 136.8 *Compliance with request for notarial services.* A consular officer should comply with all proper requests for the performance of notarial services within the limitations prescribed in this part. (See particularly §§ 136.3 to 136.7.) Moreover, as a representative of the United States Government, the consular officer, when acting in a notarial capacity, should take great care to prevent the use of his official seal in furthering any unlawful or clearly improper purpose. (See § 136.9 regarding refusal to perform notarial services in certain cases.)

§ 136.9 *Refusals of requests for notarial services.* (a) A consular officer should refuse requests for notarial services, the performance of which is not authorized by treaty provisions or permitted by the laws or authorities of the country in which he is stationed. (See § 136.4 (a).) Also, a consular officer should refuse to perform notarial acts for use in transactions which may from time to time be prohibited by law or by regulations of the United States Government such, for example, as regulations based on the "Trading With the Enemy Act", as amended.

(b) A consular officer is also authorized to refuse to perform a notarial act if he has reasonable grounds for believing that the document, in connection with which his notarial act is requested will be used for a purpose patently unlawful, improper or inimical to the best interests of the United States. Requests for notarial services should be refused only after the most careful deliberation.

§ 136.10 *Specific waiver in notarial certificate.* If the consular officer has reason to believe that material statements in a document presented for notarization are false, and if no basis exists for refusing the notarial service in accordance with § 136.9, he may consider the advisability of informing the applicant that he will perform the service only with a specific waiver of responsibility included in the notarial certificate. Furthermore, a consular officer may, in his discretion, add to the specific waiver in the notarial certificate a statement of verifiable facts known to him, which will reveal the falsity of material in the document. However, normally a consular officer shall exercise great caution not to limit the general privilege of a United States citizen while abroad to execute under oath any statement he sees fit to make, including mistaken, unnecessary, and even frivolous statements: *Provided*, That substantial and compelling reasons do not exist which impel restraining action on the part of the consular officer. On the other hand, experience has shown the desirability of including, as standard practice, a specific waiver of responsibility in all authentications (§ 136.38) executed in connection with divorce proceedings.

§ 136.11 *Preparation of legal documents*—(a) *By attorneys.* When a document has been prepared by an attorney for signature, a consular officer should not question the form of document unless it is obviously incorrect.

(b) *By consular officers.* A consular officer should not usually prepare for private persons legal documents for signature and notarization. (However, see the provisions in § 136.24 regarding the preparation of affidavits.) When asked to perform such a service, the consular officer should explain that the preparation of legal forms is normally the task of an attorney, that the forms used and the purposes for which they are used vary widely from jurisdiction to jurisdiction, and that he could not guarantee the legal effectiveness of any document which he might prepare. The person desiring the preparation of a legal document should be referred to such publications as Jones Legal Forms and The Lawyers Directory with the suggestion that he select or adapt the form which appears best suited to his needs. The consular officer may, in his discretion, arrange to have a member of his office staff type the document. If the document is typed in the Foreign Service office, the fee for copying, prescribed in item 34 of the Tariff of United States Foreign Service Fees, should be collected.

§ 136.12 *Necessity for certification of notarial acts.* A consular officer must execute a written certificate attesting to the performance of a notarial act. This certificate may be inserted on or appended to the notarized document (see § 136.17 regarding the fastening of sheets). The certificate evidences the performance of the notarial act. Failure to execute this certificate renders the notarial act legally ineffective. Each notarial act should be evidenced by a separate certificate; two or more distinct notarial acts should not be attested to by one certificate.

§ 136.13 *Form of notarial certificate.* The form of a notarial certificate depends on the nature of the notarial act it attests. (See §§ 136.18 to 136.48 for discus-

sions of the various forms of notarial certificates.) Rules pertaining to venue, and signing and sealing, are common to all notarial certificates.

§ 136.14 *Venue on notarial certificates.* (a) The term "venue" means the place where the certificate is executed. The venue must be shown on all notarial certificates to establish the qualifications and sphere of authority of the notarizing officer to perform the notarial act. The items characteristic of a typical venue, in the order of their appearance in the certificate, are as follows:

(1) Name of country (or dominion, Territory, colony, island, as appropriate);

(2) Name of province or major administrative region (if none, this may be omitted);

(3) Name of local community (city, town, or village);

(4) Name of the Foreign Service post.

(b) When a notarial act is performed, and the notarial certificate executed, at a locality in a consular district other than the locality in which the Foreign Service office is situated, the venue should mention only the name of the country (or dominion, territory, colony, island, as appropriate), and the name of the consular district.

(c) The venue used at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should bear the notation "American Consular Service" in place of the post name.

§ 136.15 *Signing notarial certificate.* The notarizing officer should sign a notarial certificate on the lower right-hand side. The name and full official title of the consular officer should be typed, stamped with a rubber stamp, or printed in ink on two separate lines immediately below his signature. When the notarizing officer is assigned to a Foreign Service post in both a diplomatic and consular capacity, he should use his consular title in the notarial certificate. (See § 136.7.)

§ 136.16 *Sealing the notarial certificate.* The notarizing officer should seal a notarial certificate with the impression seal of the post on the lower left-hand side of the certificate. A notarial certificate executed at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should be sealed with an impression seal bearing the legend "American Consular Service" and the name of the locality.

§ 136.17 *Fastening of pages.* When the instrument or document to which a notarial act relates consists of more than one sheet, or when the notarial certificate will be attached and not written on the document itself, the consular officer should bring all the sheets comprising the document together under his official seal.

SPECIFIC NOTARIAL ACTS

§ 136.18 *Oaths and affirmations defined*—(a) *Oath.* An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. In a broad sense the word "oath" includes all forms of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly, and in this sense it includes "affirmation".

(b) *Affirmation.* An affirmation is a solemn and formal declaration or asservation in the nature of an oath that a statement, or series of statements, is true. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by any person having conscientious scruples against taking an oath. As a general rule, an affirmation has the same legal force and effect as an oath.

§ 136.19 *Administering an oath.* The usual formula for administering an oath is as follows: The officer administering the oath requests the person taking the oath to raise his right hand while the officer repeats the following words: "You do solemnly swear that the statements set forth in this paper which you have here signed before me are true. So help you God." Whereupon the person taking the oath answers, "I do."

§ 136.20 *Administering an affirmation.* In administering an affirmation the procedure followed is generally the same as in the case of an oath, but the formula is varied by the use of the following words: "You do solemnly, sincerely, and truly affirm and declare that _____, and this you do under the pains and penalties of perjury".

§ 136.21 *Notarial certificate to oath or affirmation.* The written statement attesting to the administration of an oath or affirmation is known as a jurat. The jurat must be signed and sealed by the notarizing officer (see §§ 136.15 and 136.16 on signing and sealing notarial certificates).

§ 136.22 *Affidavit defined.* An affidavit is a written declaration under oath made before some person who has authority to administer oaths, without notice to any adverse party that may exist. One test of the sufficiency of an affidavit is whether it is so clear and certain that it will sustain an indictment for perjury, if found to be false. An affidavit differs from a deposition in that it is taken ex parte and without notice, while a deposition is taken after notice has been furnished to the opposite party, who is given an opportunity to cross-examine the witness.

§ 136.23 *Taking an affidavit.* The consular officer taking an affidavit should

(a) Satisfy himself, as far as possible, that his notarial act will be acceptable under the laws of the jurisdiction where the affidavit is to be used (see § 136.5);

(b) Require the personal appearance of the affiant at the time the affidavit is taken;

(c) Require satisfactory identification of the affiant; and

(d) Administer the oath to the affiant before the affiant signs the affidavit.

§ 136.24 *Usual form of affidavit.* Affidavits are usually drawn by competent attorneys or are set out in established forms. The form and substantive requirements of an affidavit depend principally upon the purpose for which it is made and the statutes of the jurisdiction where it is intended to be used. When a consular officer finds it necessary in the discharge of his official duties to prepare an affidavit, or when he assists a private person in preparing an affidavit (see § 136.11 (b)), he should, where possible, consult the pertinent statutory provisions.

§ 136.25 *Title of affidavit.* Generally an affidavit taken for use in a pending cause must be entitled in that cause so that it will show to what proceedings it is intended to apply, and may support an indictment for perjury in case it proves to be false. If there is no suit pending at the time the affidavit is taken or if the affidavit is not to be used in any cause in court, no title need be given.

§ 136.26 *Venue on affidavit.* The venue must always be given and should precede the body of the affidavit. (See § 136.14 regarding venue on notarial certificates generally.)

§ 136.27 *Affiant's allegations in affidavit*—(a) *Substance of allegations.* Although a consular officer is generally not responsible for the correctness of the form of an affidavit or the manner in which the allegations therein are set forth (see § 136.11 (a) regarding the preparation of legal documents by attorneys; § 136.11 (b) regarding the preparation of legal documents by consular officers; and § 136.24 regarding the form of an affidavit), he may, in appropriate instances, draw the affiant's attention to the following generally accepted criteria as regards the substance of the allegations:

(1) Material facts within the personal knowledge of the affiant should be alleged directly and positively. Facts are not to be inferred where the affiant has it in his power to state them positively and fully.

(2) If the matters stated in the affiant's affidavit rest upon information derived from others rather than on facts within his personal knowledge, he should aver that such matters are true to the best of his knowledge and belief.

(3) If the allegations made on information and belief are material, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be made.

(4) If the conclusions of the affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the authority to whom the affidavit is presented may determine whether the affiant's deductions are well founded.

(b) *Veracity of allegations.* Consular officers are not required to examine into the truth of the affiant's allegations or to pass upon any contentious questions involved. In many instances the matters referred to in an affidavit will be of a technical or special nature beyond the officer's general knowledge or experience. However, he may, in certain circumstances, refuse to take an affidavit. (See § 136.9 regarding the types of situations

in which an officer might properly refuse to perform a notarial service; also see § 136.10 regarding the waiver and other statements which may be included in a notarial certificate where evidence exists of falsity in the affiant's declaration.)

§ 136.28 *Signature of affiant on affidavit.* The signature of the affiant is indispensable. The affiant should always sign the affidavit in the presence of the notarizing officer.

§ 136.29 *Oath or affirmation to affidavit.* Affidavits made before consular officers must be sworn to or affirmed (see § 136.23 (d)).

§ 136.30 *Acknowledgment defined.* An acknowledgment is a proceeding by which a person who has executed an instrument goes before a competent officer or court and declares it to be his act and deed, to entitle it to be recorded or to be received in evidence without further proof of execution. An acknowledgment is almost never made under oath and should not be confused with an oath (see § 136.18 (a) for definition of oath). Moreover, an acknowledgment is not the same as an attestation, the latter being the act of witnessing the execution of an instrument and then signing it as a witness. Instruments requiring acknowledgment generally are those relating to land, such as deeds, mortgages, leases, contracts for the sale of land, and so on.

§ 136.31 *Taking an acknowledgment*—(a) *Officer's assurance of acceptability of notarial act.* A consular officer taking an acknowledgment should, if possible, ascertain the requirements of the jurisdiction in which the acknowledged document is to be used and execute the certificate in accordance with those requirements. Not all States or Territories will accept certificates of acknowledgment executed by consular officers other than consuls. Therefore consuls general, vice consuls, and consular agents who are called upon to perform this notarial act should consult the applicable state or territorial law to ascertain whether their certificates of acknowledgment will be acceptable. (See § 136.5 regarding acceptability of consular notarial acts under state or territorial law.) Furthermore, public policy generally forbids that the act of taking and certifying an acknowledgment be performed by a person financially or beneficially interested in the transaction to which the acknowledged document relates. Consular officers should keep this point in mind, especially in connection with acknowledgments by members of their families.

(b) *Personal appearance of grantor(s).* A consular officer taking an acknowledgment should always require the personal appearance of the grantor(s), i. e., the person or persons who have signed the intrument to be acknowledged. Since the officer states in his certificate that the parties did personally appear before him, failure to observe this requirement invalidates the notarial act and makes the officer liable to the charge of negligence and of having executed a false certificate. A consular officer should never take an acknowledgment by telephone.

(c) *Satisfactory identification of grantor (s).* The consular officer must be certain of the identity of the parties making an acknowledgment. If he is not personally acquainted with the parties, he should require from each some evidence of identity, such as a passport, police identity card, or the like. The laws of some States and Territories require that the identity of an acknowledger be proved by the oath of one or more "credible witnesses", and that a statement regarding the proving of identity in this manner be included in the certificate of acknowledgment. (See § 136.21 (b) regarding forms of certificates of acknowledgment generally.) Mere introduction of a person not known to the notarizing officer, without further proof of identity, is not considered adequate identification for acknowledgment purposes.

(d) *Explanation of contents of instrument.* The consular officer must assure himself that the person acknowledging an instrument understands the nature of the instrument. If the person does not understand it, the officer is legally and morally bound to explain the instrument in such a way as to make the person who has signed it realize the character and effect of his act. This duty is particularly important where the signer of a document has little or no knowledge of the language in which the document is written.

(e) *Acknowledgments of married women.* Some of the States still require that a married woman who has executed an instrument of conveyance jointly with her husband be examined separately by the notarizing officer at the time the acknowledgments of the couple are taken. Consular officers should consult the applicable statutory provisions before taking the acknowledgments of a husband and wife to a document which they have both executed.

§ 136.32 *Notarial certificate to acknowledgment*—(a) *Title.* The notarial certificate evidencing the taking of an acknowledgment is commonly known as a "certificate of acknowledgment" or sometimes simply as an "acknowledgment".

(b) *Form.* The form of a certificate of acknowledgment varies widely depending on the laws of the jurisdiction where the acknowledged document is intended to be used, the purpose for which the document is intended, and the legal position of the persons who have executed it. Instruments to be acknowledged are frequently prepared on printed forms, the entire contract or deed being on one sheet together with the certificate of acknowledgment. Often the document, including the certificate of acknowledgment, is drawn up in advance by an attorney. In these cases, the consular officer may use the certificate which is already on the document, making whatever modifications are manifestly required to show that the certificate was executed by a consular officer. However, if he finds it necessary to prepare the certificate of acknowledgment, the officer should consult the appropriate reference work for guidance as to the proper form. When no prescribed form can be found, the officer should use the langauge in Form FS–88, Certificate of Acknowledgment of Execution of an Instrument, inserting the certificate immediately at the close of the deed on the last page if space permits, or, if a separate sheet is necessary, using the printed Form FS–88 itself.

§ 136.33 *Execution of certificate of acknowledgment*—(a) *When certificate should be executed.* A consular officer should execute a certificate of acknowledgment immediately after the parties to the instrument have made their acknowledgment. Allowing several days or weeks to elapse between the time the acknowledgment is made and the certificate executed is undesirable, even though the officer may remember the acknowledgment act.

(b) *Venue.* The venue must be shown as prescribed in §136.14.

(c) *Date.* The date in the certificate must be the date the acknowledgment was made. This is not necessarily the same as the date the instrument was executed. In fact, there is no reason why an instrument may not be acknowledged a year or more after the date of its execution, or at different times and places by various grantors.

(d) *Names of parties.* The name or names of the person or persons making the acknowledgment should appear in the certificate in the same form as they are set out in the acklowledged document, and in the same form as their signature on the instrument.

(e) *Additional statements.* When executing a certificate of acknowledgment on Form FS–88, the notarizing officer may include any necessary additional statements in the blank space below the body of the certificate.

(f) *Signing and sealing certificate.* The certificate of acknowledgment shall be signed and sealed as prescribed in §§ 136.15 and 136.16.

§ 136.34 *Fastening certificate to instrument.* The proper place for the certificate of acknowledgment is after the signature of the parties to the instrument. If the instrument is a printed form, the certificate will almost invariably be a part of the form. When Form FS–88 is used or when the certificate must be prepared on a sheet separate from the instrument, it should be fastened to the instrument as the last sheet. The method of fastening notarial certificates is prescribed in § 136.17.

§ 136.35 *Errors in certificate of acknowledgment.* A consular officer having taken an acknowledgment of an instrument and made a certificate of that fact, cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can be done only by the parties reacknowledging the instrument. However, typographical errors may be corrected by striking out the erroneous characters and inserting the correct ones above. Such changes should be initialed by the parties who executed the instrument and by the notarizing officer.

§ 136.36 *Authentication defined.* An authentication is a certification of the genuineness of the official character, i. e., signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers.

§ 136.37 *Authentication procedure.* (a) The consular officer must compare the foreign official's seal and signature on the document he is asked to authenticate with a specimen of the same official's seal and signature on file either in the Foreign Service office or in a foreign public office to which he has access. If no specimen is available to the consular officer, he should require that each signature and seal be authenticated by some higher official or officials of the foreign government until there appears on the document a seal and signature which he can compare with a specimen available to him. However, this procedure of having a document authenticated by a series of foreign officials should be followed only where unusual circumstances, or the laws or regulations of the foreign country require it.

(b) Where the State law requires the consular officer's certificate of authentication to show that the foreign official is empowered to perform a particular act, such as administering an oath or taking an acknowledgment, the consular officer must verify the fact that the foreign official is so empowered.

(c) When the consular officer has satisfactorily identified the foreign seal and signature, (and, where required, has verified the authority of the foreign official to perform a particular act), he may then execute a certificate of authentication, either placing this certificate on the document itself if space is available, or appending it to the document on a separate sheet (see § 136.17 on the fastening of notarial certificates).

§ 136.38 *Forms of certificate of authentication.* The form of a certificate of authentication depends on the statutory requirements of the jurisdiction where the authenticated document will be used (see § 136.39 regarding the provisions of Federal law). Before authenticating a document for use in a State or Territory of the United States, a consular officer should consult the pertinent law digest to ascertain what specific requirements must be met, or he should be guided by any special information he may receive from the attorney or other person requesting the document with regard to the applicable statutory requirements. (See § 136.41 (e) regarding material which should not be in the certificate of authentication.) If no provisions relating to authentications can be found in a particular State or Territorial law digest, and in the absence of any special information from the attorney or other person requesting the document, the officer should prepare the certificate of authentication in the form which seems best suited to the needs of the case. When in his opinion the circumstances seem to warrant, and always in connection with certificates of marriage or divorce decrees, a consular officer should include in the body of his certificate of authentication a qualifying statement reading as follows: "For the contents of the annexed document I assume no responsibility."

§ 136.39 *Authenticating foreign public documents (Federal procedures).* (a) A copy of a foreign public document intended to be used as evidence within the jurisdiction of the Federal Government of the United States must be authenticated in accordance with the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 948, sec. 92 (b), 63 Stat. 103; 28 U. S. C. Sup. 1741). This provision of Federal law provides that a copy of any foreign document of record, or on file in a public office of a foreign country or political subdivision thereof, if certified by the lawful custodian thereof, may be admitted in evidence when authenticated by a certificate of a United States consular officer resident in the foreign country, under the seal of his office.

(b) The consular officer's certificate should indicate that the copy has been certified by the lawful custodian.

§ 136.40 *Authentication of foreign extradition papers.* Foreign extradition papers are authenticated by chiefs of mission.

§ 136.41 *Limitations to be observed in authenticating documents*—(a) *Unknown seals and signatures.* A consular officer should not authenticate a seal and signature not known to him. See § 136.37 (a) regarding the necessity for making a comparison with a specimen seal and signature.

(b) *Foreign officials outside consular district.* A consular officer should not authenticate the seals and signatures of foreign officials outside his consular district.

(c) *Officials in the United States.* Consular officers are not competent to authenticate the seals and signatures of notaries public or other officials in the United States. However, diplomatic and consular officers stationed at a United States diplomatic mission may certify to the seal of the Department of State (not the signature of the Secretary of State) if this is requested or required in particular cases by the national authorities of the foreign country.

(d) *Photostat copies.* Consular officers should not authenticate facsimiles of signatures and seals on photographic reproductions of documents. They may, however, authenticate original signatures and seals on such photographic reproductions.

(e) *Matters outside consular officer's knowledge.* A consular officer should not include in his certificate of authentication statements which are not within his power or knowledge to make. Since consular officers are not expected to be familiar with the provisions of foreign law, except in a general sense, they are especially cautioned not to certify that a document has been executed or certified in accordance with foreign law, nor to certify that a document is a valid document in a foreign country.

(f) *United States officials in foreign countries.* An authentication by a United States consular officer is performed primarily to cause the official characters and positions of foreign officials to be known and recognized in the United States. Consular officers should not, therefore, undertake to authenticate the seals and signatures of other United States officials who may be residing in their consular districts.

(g) *Officers of the Foreign Service in other countries.* An officer of the Foreign Service stationed in one country is not expected to authenticate the signature or seal of an officer of the Foreign Service stationed in another country. When it is necessary for the seal and signature of an officer of the Foreign Service to be authenticated, such authentication will be done in the Department of State. An official of a foreign government requesting the authentication of the seal and signature of an officer of the United States Foreign Service who is, or was, stationed in another country should be informed that the document to be authenticated will have to be sent to the Department for this purpose. Any document bearing the seal and signature of an officer of the Foreign Service which is received at a Foreign Service post from a person in the United States with the request that it be further authenticated should be referred to the Department of State.

§ 136.42 *Certification of copies of foreign records relating to land titles*—(a) *Authority to certify copies.* Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 948; 28 U. S. C. Sup. 1742) authorizes any person having custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, to authenticate and certify copies thereof under his hand and seal, when this is requested by the head of a department or agency of the United States.

(b) *Certification procedure.* When a consular officer is requested to certify a copy of a foreign record relating to a land title, he should carefully compare the copy with the original to assure himself that they agree in every particular. He should then execute a certificate under his hand and seal of office.

(c) *Transmission of certified copies.* United States diplomatic and consular officers who certify such copies should forward them to the Department of State for transmission to the General Counsel for the Treasury Department, who will file them in his office and cause them to be recorded in a book kept for that purpose.

(d) *Legal effect of certification.* A copy so certified and filed may be read in evidence equally with the original in any court where the title to land claimed by or under the United States may come into question.

§ 136.43 *Fees for oaths and affirmations.* For administering an oath or

affirmation and making a certificate thereof, a fee of $2 must be charged, as prescribed in item 24 of the Tariff of United States Foreign Service Fees, unless provision is made elsewhere in the Tariff of Fees for performing the service without charge. (See § 136.48 regarding the performance of services gratis under item 38 of the Tariff of Fees.) If an oath or an affirmation is administered concurrently to several persons and only one consular certificate (jurat) is executed, only one fee is collectible.

§ 136.44 *Fees for affidavits.* The notarial service involved in the taking of an affidavit is essentially the administration of the oath or affirmation to the affiant. The fee charged is the fee for administering the oath or affirmation. See § 136.43 regarding fees for oaths and affirmations.

§ 136.45 *Fees for acknowledgments.* For taking an acknowledgment and executing a certificate thereof, a fee of $2 must be charged, as prescribed in item 28 of the Tariff of United States Foreign Service Fees, unless provision is made elsewhere in the Tariff of Fees for performing the service without charge. (See § 136.48 regarding the performance of services gratis under item 38 of the Tariff of Fees.) If more than one person joins in making an acknowledgment but only one certificate is executed, only one fee should be charged.

§ 136.46 *Fees for authentications.* For each certificate of authentication a fee of $2 must be charged, as prescribed in item 31 of the Tariff of United States Foreign Service Fees, unless provision is made elsewhere in the Tariff of Fees for performing the service without charge. (See § 136.48 regarding the performance of services gratis under item 38 of the Tariff of Fees.)

§ 136.47 *Fees for certifying copies of documents.* For certifying to the correctness of a copy of a document a fee of $2 must be charged, as prescribed in item 35 of the Tariff of United States Foreign Service Fees, unless provision is made elsewhere in the Tariff of Fees for performing the service without charge. (See § 136.48 regarding the performance of services gratis under item 38 of the Tariff of Fees; see § 136.11 (b) regarding the charging of fees when legal documents are prepared by consular officers.) When issuing certified copies of, or extracts from, any record or document, the fee prescribed in item 35 must be charged for the certificate attesting to the correctness of the copy, in addition to the copying fee (see § 136.76 (b)).

§ 136.48 *No-fee services under item 38 of the Tariff of Fees.* (a) Item 38 of the Tariff of Fees prescribes, in part, the performance without charge of "any and all notarial services, such as the administration of oaths or the taking of acknowledgments, in connection with the execution of forms or other documents issued by or to be presented to any department or agency of the Government of the United States, the gratis performance of which is not otherwise provided for in the Tariff of Fees". The documents referred to in this provision are those presented to United States Government departments or agencies which the Government has taken the initiative in requiring, such as affidavits relating to the loss of, or to the relinquishment of, ownership of United States Government checks and affidavits executed when United States bonds are cashed. This provision does not include documents submitted to a Government agency for the individual's own purposes and on his own initiative.

(b) Item 38 also prescribes the performance without charge of "any and all notarial services performed for members of the armed forces of the United States or for any civilian employees of the Government of the United States". This does not include members of the families of persons in these categories nor does it include persons who were formerly in these categories. When several persons join in one notarial proceeding (such as when more than one person makes an acknowledgment and only one certificate is executed) and when one or more of the persons—but not all of them—belong in either of these categories, the usual fee for the service should be charged, unless the gratis performance of the service is otherwise provided for in the Tariff of Fees. In a case of this kind the notarial service should be performed without charge only when all of the persons joining in the notarial proceeding are either members of the armed forces of the United States or employees of the Government of the United States.

DEPOSITIONS AND LETTERS ROGATORY

§ 136.49 *Deposition defined.* A deposition is the testimony of a witness taken in writing under oath or affirmation, before some designated or appointed person or officer, in answer to interrogatories, oral or written. (For the distinction between a deposition and an affidavit see §136.22.)

§ 136.50 *Use of depositions in court actions.* Generally depositions may be taken and used in all civil actions or suits. In criminal cases in the United States, a deposition cannot be used, unless a statute has been enacted which permits a defendant in a criminal case to have a deposition taken in his own behalf, or unless the defendant consents to the taking of a deposition by the State for use by the prosecution. (For exception in connection with the proving of foreign documents for use in criminal actions, see § 136.65.)

§ 136.51 *Methods of taking depositions in foreign countries.* Rule 28 (b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the three following methods:

(a) On notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States;

(b) By commission, before such person or officer as may be appointed by the commission;

(c) Under letters rogatory, before an appropriate foreign court.

Rule 15 of the Federal Rules of Criminal Procedure provides that depositions may be taken in the same manner as in civil cases, but only upon order of court. The statutes of the States define the methods which may be employed for taking depositions in foreign countries for use in State courts and the provisions vary from one jurisdiction to another. However, provision is usually made for one or all of the aforementioned methods.

§ 136.52 *"Deposition on notice" defined.* A "deposition on notice" is a deposition taken before a competent official after reasonable notice has been given in writing by the party or attorney proposing to take such deposition to the opposing party or attorney of record. Under the Federal law, diplomatic and consular officers are defined as competent officials for taking depositions on notice in foreign countries (see § 136.51). This method of taking a deposition does not necessarily involve the issuance of a commission or other court order.

§ 136.53 *"Commission to take depositions" defined.* A "commission to take depositions" is a written authority issued by a court of justice, or by a quasi-judicial body, or a body acting in such capacity, giving power to take the testimony of witnesses who cannot appear personally to be examined in the court or before the body issuing the commission. In Federal practice, a commission to take depositions is issued only when necessary or convenient, on application and notice. The commission indicates the action or hearing in which the depositions are intended to be used, and the person or persons required to take the depositions, usually by name or descriptive title (see § 136.55 for manner of designating consular officers). Normally a commission is accompanied by detailed instructions for its execution.

§ 136.54 *"Letters rogatory" defined.* "Letters rogatory" is a formal communication from a court in which an action is pending to a foreign court requesting that the testimony of a witness or witnesses residing in the jurisdiction of the foreign court be taken under the direction of that court and transmitted to the court making the request. Like commissions to take depositions, letters rogatory are sometimes issued by quasi-judicial bodies. In Federal practice, letters rogatory are issued only when necessary or convenient, on application and notice. When the name of the foreign court is not known, the letters are usually adressed "To the Appropriate Judicial Authority in (name of country in which the foreign court is situated)".

§ 136.55 *Consular authority and responsibilities for taking depositions.* Any United States consular officer may be requested to take a deposition on notice, or designated to execute a commission to take depositions. A commission or notice should, if possible, identify the officer who is to take the depositions by his official title only, as in the following manner: "Any Consul or Vice Consul of the United States of America at (name of locality)". The consular officer responsible for the performance of notarial acts at a post should act on a request to

take a deposition on notice, or should execute the commission, when the documents are drawn in this manner. However, when the officer (or officers) is designated by name as well as by title, only the officer (or officers) so designated may take the depositions. In either instance, the officer must be a disinterested party. Rule 28 (c) of the Rules of Civil Procedure for the District Courts of the United States prohibits the taking of a deposition before a person who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action. Consular officers are under no obligation to find witnesses whose testimony may be desired, and they have no authority to compel the attendance of witnesses. Furthermore, in countries where the right to take depositions is not secured by treaty, consular officers may take depositions only if the laws or authorities of the national government will permit them to do so. Consular officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents, through the Department, to the parties from whom they are received, explaining why they are returning them and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

§ 136.56 *Summary of procedure for taking depositions.* In taking a deposition on notice or executing a commission to take depositions, a consular officer should conform to any statutory enactments on the subject in the jurisdiction in which the depositions will be used. He should also comply with any special instructions which accompany the request for a deposition on notice or a commission. Unless otherwise directed by statutory enactments or special instructions, the officer should proceed as follows in taking depositions:

(a) Request the witnesses, whose testimony is needed, to appear before him; or, at the request of any party to the action or proceeding, request designated persons to supply him or the requesting party with needed records or documents in their possession, or copies thereof;

(b) When necessary, act as interpreter or translator, or employ some qualified person to act in this capacity;

(c) Before the testimony is taken, administer oaths (or affirmations in lieu thereof) to the interpreter or translator (if there is one), to the stenographer taking down the testimony, and to each witness;

(d) Have the witnesses examined in accordance with the procedure described in §§ 136.57 to 136.60;

(e) Either record, or have recorded in his presence and under his direction, the testimony of the witnesses;

(f) Take the testimony, or have it taken, stenographically in question-and-answer form and transcribed (see § 136.58) unless the parties to the action agree otherwise (rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States);

(g) Be actually present throughout the examination of the witnesses, but recess the examination for reasonable periods of time and for sufficient reasons;

(h) Mark or cause to be marked, by identifying exhibit numbers or letters, all documents identified by a witness or counsel and submitted for the record.

§ 136.57 *Oral examination of witnesses.* When a witness is examined on the basis of oral interrogatories, the counsel for the party requesting the deposition has the right to conduct a direct examination of the witness without interruption except in the form of objection by opposing counsel. The opposing counsel has the same right on cross-examination. Cross-examination may be followed by redirect and recross-examinations until the interrogation is complete. The consular officer taking the deposition should endeavor to restrain counsel from indulging in lengthy colloquies, digressions, or asides, and from attempts to intimidate or mislead the witness. The consular officer has no authority to sustain or overrule objections but should have them recorded as provided in § 136.59. Instead of taking part in the oral examination of a witness, the parties notified of the taking of a deposition may transmit written interrogatories to the consular officer. The consular officer should then question the witness on the basis of the written interrogatories and should record the answers verbatim. (Rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 136.58 *Examination on basis of written interrogatories.* Written interrogatories are usually divided into three parts:

(a) The direct interrogatories or interrogatories in chief;

(b) The cross-interrogatories; and

(c) The redirect interrogatories.

Recross-interrogatories sometimes follow redirect interrogatories. The consular officer should not furnish the witness with a copy of the interrogatories in advance of the questioning, nor should he allow the witness to examine the interrogatories in advance of the questioning. Although it may be necessary for the officer, when communicating with the witness for the purpose of asking him to appear to testify, to indicate in general terms the nature of the evidence which is being sought, this information should not be given in such detail as to permit the witness to formulate his answers to the interrogatories prior to his appearance before the consular officer. The officer taking the deposition should put the interrogatories to the witness separately and in order. The written interrogatories should not be repeated in the record (unless special instructions to that effect are given), but an appropriate reference should be made thereto. These references should, of course, be followed by the witness' answers. All of the written interrogatories must be put to the witness, even though at some point during the examination the witness disclaims further knowledge of the subject. When counsel for all of the parties attend an examination conducted on written interrogatories, the consular officer may, all counsel having consented thereto, permit oral examination of the witness following the close of the examination upon written interrogatories. The oral examination should be conducted in the same manner and order as if not preceded by an examination upon written interrogatories.

§ 136.59 *Recording of objections.* All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings must be noted in the deposition. Evidence objected to will be taken subject to the objections. (Rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 136.60 *Examination procedures—*(a) *Explaining interrogatory to witness.* If the witness does not understand what an interrogatory means, the consular officer should explain it to him, if possible, but only so as to get an answer strictly responsive to the interrogatory.

(b) *Refreshing memory by reference to written records.* A witness may be permitted to refresh his memory by referring to notes, papers, or other documents. The consular officer should have such occurrence noted in the record of the testimony together with a statement of his opinion as to whether the witness was using the notes, papers, or other documents to refresh his memory or for the sake of testifying to matters not then of his personal knowledge.

(c) *Conferring with counsel.* When the witness confers with counsel before answering any interrogatory, the consular officer should have that fact noted in the record of the testimony.

(d) *Examining witness as to personal knowledge.* The consular officer may at any time during the examination of a witness propound such inquiries as may be necessary to satisfy himself whether the witness is testifying from his personal knowledge of the subject matter of the examination.

(e) *Witness not to leave officer's presence.* The consular officer should request the witness not to leave his presence during the examination, except during the recesses for meals, rest, etc., authorized in § 136.56 (g). Failure of the witness to comply with this request must be noted in the record.

§ 136.61 *Transcription and signing of record of examination.* After the examination of a witness is completed, the stenographic record of the examination must be fully transcribed and the transcription attached securely to any document or documents to which the testimony in the record pertains. (See § 136.63 regarding the arrangement of papers.) The transcribed deposition must then be submitted to the witness for examination and read to or by him, unless such examination and reading are waived by the witness and by the parties to the action. Any changes in form or substance desired by the witness should be entered upon the deposition by the

consular officer with a statement of the reasons given by the witness for making the changes. The witness should then sign the transcript of his deposition and should initial in the margin each correction made at his request. However, the signature and initials of the witness may be omitted if the parties to the action by stipulation waive the signing or if the witness is ill, refuses to sign, or cannot be found. If the deposition is not signed by the witness, the consular officer should sign it and should state on the record the reason for his action, i. e., the waiver of the parties, the illness or absence of the witness, or the refusal of the witness to sign, giving the reasons for such refusal. The deposition may then be used as though signed by the witness, except when, on the motion to suppress, the court holds that the reasons given for the refusal to sign require the rejection of the deposition in whole or in part. (Rules 30 (e) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§136.62 *Captioning and certifying depositions.* The counselor officer should prepare a caption for every deposition; should certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness; and should sign and seal the certification in the manner prescribed in §§ 136.15 and 136.16. (Rules 30 (f) (1) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 136.63 *Arrangement of papers.* Unless special instructions to the contrary are received, the various papers comprising the completed record of the depositions should usually be arranged in the following order from bottom to top:

(a) Commission to take depositions (or notice of taking depositions), with interrogatories, exhibits, and other supporting documents fastened thereto.

(b) Statement of fees charged, if one is prepared on a separate sheet.

(c) Record of the responses of the various witnesses, including any exhibits the witnesses may submit.

(d) Closing certificate.

All of these papers should be fastened together with ribbon, the ends of which should be secured beneath the consular officer's seal affixed to the closing certificate.

§ 136.64 *Filing depositions*—(a) *Preparation and transmission of envelope.* The notice or commission, the interrogatories, the record of the witnesses' answers, the exhibits, and all other documents and papers pertaining to the depositions should be fastened together (see § 136.63 regarding the arrangement of papers) and should be enclosed in an envelope sealed with the wax engraving seal of the post. The envelope should be endorsed with the title of the action, and should be marked and addressed. If the notice or commission and the interrogatories were initially received under cover of instructions from the Department, the sealed envelope should be returned to the Department, for transmission to the court. If the documents were initially sent direct to the Foreign Service post and not through the Department, the sealed envelope should be either returned through the Department or forwarded by registered mail direct to the court in which the action is pending. (Rules 30 (f) (1) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.

(b) *Furnishing copies.* The original completed depositions should not be sent to any of the parties to the action or to their counsel. However, the consular officer may furnish a copy of a deposition to the deponent or to any party to the action upon the payment of the fee prescribed in item 34 of the Tariff of United States Foreign Service Fees. (Rules 30 (f) (2) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.) If certification of the copy of the deposition is desired, the fee of $2.00 for certification, which is prescribed in item 35 of the Tariff of United States Foreign Service Fees, should also be charged.

§ 136.65 *Depositions to prove genuineness of foreign documents*—(a) *Authority to execute commission.* Under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. Sup. 3492), a diplomatic or consular officer may be commissioned by an United States court to take the testimony of a witness in a foreign country either on oral or written interrogatories, or partly on oral and partly on written interrogatories, for the purpose of determining the genuineness of any foreign document (any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States) which it is desired to introduce in evidence in any criminal action or proceeding in any United States court under the provisions of section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 945; 28 U. S. C. Sup. 1732). Such testimony may also be taken to determine whether the foreign document was made in the regular course of business and whether it was the regular course of business to make such document. The term "business" includes business, profession, occupation, and calling of every kind. (Sec. 1, 62 Stat. 945, 28 U. S. C. Sup. 1732.)

(b) *Disqualification to execute commission.* Any diplomatic or consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are intended to be used or who has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If, after notice and hearing, the court grants the motion, it will instruct the diplomatic or consular officer thus disqualified to send the commission to any other diplomatic or consular officer of the United States named by the court, and such other officer should execute the commission according to its terms and will for all purposes be deemed the officer to whom the commission is addressed. (Sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. Sup. 3492.)

(c) *Execution and return of commission.* (1) Commissions issued in criminal cases under the authority of the act of June 25, 1948, as amended, to take testimony in connection with foreign documents should be executed and returned by officers of the Foreign Service in accordance with section 1 of that act, as amended (sec. 1, 62 Stat. 835; 18 U. S. C. Sup. 3493, 3494), and in accordance with any special instructions which may accompany the commission. For details not covered by such section or by special instructions, officers of the Foreign Service should be guided by such instructions as may be issued by the Department of State in connection with the taking of depositions generally. (See §§ 136.55 to 136.64.)

(2) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U. S. C. Sup. 3493) provides that every person whose testimony is taken should be cautioned and sworn to testify the whole truth and should be carefully examined. The testimony should be reduced to writing or typewriting by the consular officer, or by some person under his personal supervision, or by the witness himself in the presence of the consular officer, and by no other person. After it has been reduced to writing or typewriting, the testimony must be signed by the witness. Every foreign document with respect to which testimony is taken must be annexed to such testimony and must be signed by each witness who appears for the purpose of establishing the genuineness of such document.

(3) When counsel for all of the parties attend the examination of any witness whose testimony will be taken on written interrogatories, they may consent that oral interrogatories, in addition to those accompanying the commission, be put to the witness. The consular officer taking the testimony should require an interpreter to be present when his services are needed or are requested by any party or his attorney. (Sec. 1, 62 Stat. 835, 18 U. S. C. Sup. 3493.)

(4) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U. S. C. Sup. 3494) provides that the consular officer, who executes any commission authorized under the same section, as amended (sec 1, 62 Stat. 834, sec 53, 63 Stat. 96; 18 U. S. C. Sup. 3492), and who is satisfied, upon all the testimony taken, that a foreign document is genuine, should certify such document to be genuine under the seal of his office. This certification must include a statement that the officer is not subject to disqualification under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. Sup. 3492). No fee should be charged for issuing this certificate, since no item of the Tariff of United States Foreign Service Fees is applicable.

(5) The consular officer should then forward such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the Department of State for transmission to the clerk of the court from which the commission issued. (Sec. 1, 62 Stat. 835; 18 U. S. C. Sup. 3494.) (See § 136.64 regarding the filing of depositions generally.)

§ 136.66 *Depositions taken before foreign officials or other persons in a foreign country*—(a) *Customary practice.* Under the Federal law (rule 28 (b), Rules of Civil Procedure for the District Courts of the United States) and under the laws of some of the States a commission to take depositions can be issued to a foreign official or to a private person in a foreign country. However, this method is rarely used; commissions are generally issued to United States consular officers. In those countries where United States consular officers are not permitted to take testimony (see § 136.55) and where depositions must be taken before a foreign authority, letters rogatory are usually issued to a foreign court (see § 136.54 for definition of letters rogatory).

(b) *Transmission of letters rogatory to foreign officials.* Letters rogatory may theoretically be sent directly from court to court. However, foreign governments almost invariably require that such documents be submitted through the diplomatic channel. The Department always transmits letters rogatory to the appropriate United States diplomatic mission under cover of special instructions. The Department requires an advance deposit of $60 or $80 (depending upon the country of execution) to defray any expenses which may be involved in the execution and return of the letters rogatory. The letters rogatory, as well as the interrogatories and other papers included with them, must be accompanied by a complete translation into the language of the country of execution.

(c) *Return of letters rogatory executed by foreign officials.* (1) Letters rogatory executed by foreign officials are returned through the same channel by which they were initially transmitted. When such documents are returned to a United States diplomatic mission, the responsible officer should endorse thereon a certificate stating the date and place of their receipt. This certificate should be appended to the documents as a separate sheet. The officer should then enclose the documents in an envelope sealed with the wax engraving seal of the post and bearing an endorsement indicating the title of the action to which the letters rogatory pertain. The name and address of the United States court or quasi-judicial body from which the letters rogatory issued should also be placed on the envelope, and it should then be transmitted to the Department. (Sec. 1, 62 Stat. 948; 28 U. S. C. Sup. 1781.)

(2) If the executed letters rogatory are returned to the diplomatic mission from the Foreign Office in an envelope bearing the seals of the foreign judicial authority who took the testimony, that sealed envelope should not be opened at the mission. The responsible officer should place a certificate on the envelope showing the date it was received at his office and indicating that it is being forwarded in the same condition as received from the foreign authorities. He should then place that sealed envelope in a second envelope, sealed with the wax engraving seal of the post, and bearing the title of the action and the name and address of the United States court or quasi-judicial body from which the letters rogatory issued. The sealed package should then be transmitted to the Department. No charge should be made for executing either of the certificates mentioned in this section.

(d) *Transmission of commissions to foreign officials or other persons.* A commission to take depositions which is addressed to an official or person in a foreign country other than a United States diplomatic or consular officer may be sent directly to the person designated. However, if such a commission is sent to the United States diplomatic mission in the country where the depositions are intended to be taken, it should be forwarded to the Foreign Office for transmission to the person appointed in the commission. If sent to a United States consular office, the commission may be forwarded by that office direct to the person designated, or, if the consular officer deems it more advisable to do so, he may send the commission to the United States diplomatic mission for transmission through the medium of the Foreign Office.

(e) *Return of commissions executed by foreign officials or other persons.* The executed commission, if it is returned through the medium of a United States Foreign Service post, should be transmitted to the Department in the same manner as that indicated for executed letters rogatory (see paragraph (c) of this section).

(f) *Inquiries concerning execution of letters rogatory abroad.* Officers of the Foreign Service should refer to the Department of State all inquiries concerning the execution of letters rogatory in foreign countries.

§ 136.67 *Execution of letters rogatory in the United States*—(a) *Answering inquiries.* A person who inquires regarding the execution of letters rogatory in the United States should be given the information which appears in paragraphs (b) and (c) of this section and in § 136.71.

(b) *Authority and procedure.* So far as the Federal Government is concerned, the deposition of any witness within the United States for use in any judicial proceeding pending in any court in a foreign country with which the United States is at peace, may be taken before a person authorized to administer oaths, who is designated by the district court of the United States of any district where the witness resides or may be found. The practice and procedure in taking such depositions conforms generally to the practice and procedure for taking depositions for use in United States courts. (Sec. 1, 62 Stat. 749, sec. 93, 63 Stat. 103; 28 U. S. C. Sup. 1782.) The procedure for taking depositions is covered in rules 26 through 37, Rules of Civil Procedure for the District Courts of the United States. The taking of depositions in State courts for use in the courts of foreign countries is governed by the laws of the individual States.

(c) *Addressing letters rogatory.* Letters rogatory for execution in the United States should generally be directed as follows: "To Any Judge or Justice Having Civil Jurisdiction at (name of locality)". Letters rogatory in civil actions will usually be executed in the State courts, and those in criminal actions, in the District Courts of the United States. However, the District Courts of the United States may execute letters rogatory in any judicial proceeding, whether criminal or civil. Such letters rogatory should be directed to:

The United States District Court for the ---------- District of ----------,

----------, ----------
(City) (State)

Letters rogatory should request the district court to take or cause to be taken the testimony of the witnesses whose testimony is desired, stating whether the testimony is intended to be taken upon oral or written interrogatories. If the party on whose behalf the testimony is intended to be taken will not be represented by counsel, written interrogatories should accompany the letters rogatory. Letters rogatory and interrogatories in a foreign language should be accompanied by English translations.

(d) *Transmitting letters rogatory to courts in the United States.* Although most foreign countries require the presentation of letters rogatory through the foreign office, this practice is not followed in the United States. Letters rogatory for execution in a court in the United States should be forwarded directly to the court by the appropriate diplomatic or consular officer of the country in which the depositions are intended to be used. The Department of State does not act as intermediary in such instance. Letters rogatory directed to a district court of the United States should be sent in an envelope addressed to the clerk of the district court.

§ 136.68 *Foreign Service fees to be collected for taking depositions*—(a) *Amount of fees.* For taking a deposition on notice or for executing a commission to take depositions, the fee prescribed in item 32 ($10 for taking depositions or executing commission, including the first 500 words of transcript; 50 cents for each additional 100 words or fraction thereof) of the Tariff of United States Foreign Service fees must be charged, unless provision is made elsewhere in the Tariff of fees for performing the services without charge. For preparing the typewritten record of the depositions the fee prescribed in item 34 (50 cents per hundred words for copying) of the Tariff must be charged, with duplicate fees being charged for each copy prepared, unless provision is made elsewhere in the Tariff of fees for performing the service without charge. When appropriate the fees prescribed in item 33 ($1.00 for every 100 words of translating or every hour of interpreting by a member of the consular staff)

and item 36 ($1.00 per hour for services performed outside consulate) of the Tariff must also be charged.

(b) *Advance deposit to cover fees.* Since a consular officer cannot determine accurately the amount of fees due until the deposition has been taken, he should request an advance deposit of funds to cover such fees from the party desiring the depositions. When a notice or commission to take depositions is forwarded through the Department of State, the Department will request a minimum deposit of $50 from the party from whom the documents are received, subject to refundment of any unexpended balance remaining after the depositions have been taken. When a notice or commission is sent directly to a Foreign Service post, the advance deposit should, if possible, be made with the post. However, if definite arrangements are made in advance to have the fees paid by an interested party in the foreign country, no advance deposit need be made with the Department or with the post.

§ 136.69 *Fees payable to foreign officials, witnesses, foreign counsel and interpreters.*—(a) *Execution of letters rogatory by foreign officials.* See § 136.66 (b) regarding the advance deposit required to defray expenses involved in the execution of letters rogatory by foreign officials.

(b) *Execution of commissions by foreign officials or other persons abroad.* When the Department of State acts as intermediary in the transmission of a commission to a foreign official or a private person in a foreign country, an advance deposit of at least $50 will be requested from the party from whom the commission is received. If such a commission is sent directly to a Foreign Service post for onward transmission, the advance deposit may be made with the post. However, if definite arrangements are made in advance to have the expenses paid by an interested party in the foreign country, no advance deposit need be made with the Department or with the post.

(c) *Witness fees and allowances when depositions are taken pursuant to commission from United States court.* A witness attending in any United States court or before a United States commissioner or person, taking his deposition pursuant to any order of a United States court, is entitled to receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 7 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the United States Government and who are not in custody and who attend at points so far removed from their respective residence as to prohibit return thereto from day to day are entitled to an additional allowance of $5 per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance. (Sec. 1, 62 Stat. 950, 63 Stat. 65, sec. 94, 63 Stat. 103; 28 U. S. C. Sup. 1821.) Witnesses giving depositions before consular officers pursuant to a commission issued by the United States court are entitled to these fees and allowances, and the officer should make payment thereof in the same manner as payment is made of other expenses involved in the execution of the commission, charging the advance deposit provided by the party at whose request the depositions are taken (see § 136.68 (b)). In any case to which the United States (or an officer or agency thereof) is a party, and when the commission to take the depositions is issued at the request of the United States (or an officer or agency thereof), the United States marshal for the district will pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner. (Sec. 1, 62 Stat. 951; 28 U. S. C. Sup. 1825.)

§ 136.70 *Special fees for depositions in connection with foreign documents.*—(a) *Fees payable to witnesses.* Each witness whose testimony is obtained under a commission to take testimony in connection with foreign documents for use in criminal cases will be entitled to receive compensation at the rate of $10 a day for each day of attendance, plus 7 cents a mile for going from his place of residence or business to the place of examination, and returning, by the shortest feasible route. When, however, it is necessary to procure the attendance of a witness on behalf of the United States or an indigent party, an officer or agent of the United States may negotiate with the witness to pay compensation at such higher rate as may be approved by the Attorney General, plus the mileage allowance stated above. The expense of the compensation and mileage of each witness will be borne by the party, or parties, applying for the commission unless the commission is accompanied by an order of court that all fees, compensations, and other expenses authorized by these regulations are chargeable to the United States under section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 836, sec. 54, 63 Stat. 96; 18 U. S. C. Sup. 3495).

(b) *Fees payable to counsel.* Each counsel who represents a party to the action or proceeding in the examination before the commissioner will receive compensation for each day of attendance at a rate of not less than $15 a day and not more than $50 a day, as agreed between him and the party whom he represents, plus such actual and necessary expenses as may be allowed by the commissioner upon verified statements filed with him. If the commission is issued on application of the United States, the compensation and expenses of counsel representing each party are chargeable to the United States. If the commission is issued on application of any other party, the cost of the compensation and expense of counsel will be borne by the party whom such counsel represents, unless the commission is accompanied by an order of court that all fees, compensation, and other expenses authorized by these regulations are chargeable to the United States under section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 836, sec. 54, 63 Stat. 96; 18 U. S. C. Sup. 3405).

(c) *Fees payable to interpreters and translators.* Each interpreter and translator employed by the commissioner under these regulations will receive an allowance of $5 a day, plus 7 cents a mile for going from his place of residence or business to the place of examination and returning, by the shortest feasible route. The compensation and mileage of interpreters and translators will be chargeable to the United States.

(d) *Time for paying fees.* Witnesses, counsel, interpreters, and translators will be paid, in accordance with the foregoing regulations, by the commissioner at the conclusion of their services. Other expenses authorized by these regulations will be paid by the commissioner as they are incurred.

(e) *Payment of fees by the United States.* When it appears that the commission was issued on application of the United States or when the commission is accompanied by an order of court that all fees, compensation, and other expenses authorized by these regulations are chargeable to the United States under section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 836, sec. 54, 63 Stat. 96; 18 U. S. C. Sup. 3495), the commissioner should execute the commission without charge for his service as commissioner in connection therewith. The commissioner should pay witnesses, counsel, interpreter, or translator, and other expenses authorized by these regulations through the disbursing officer in his area in accordance with instructions which will be issued in each case.

(f) *Payment of fees by other parties.* When fees, compensation, and other expenses authorized by this part are chargeable to any party other than the United States, the commissioner should undertake the execution of the commission only if such party deposits with the Department of State, in advance, an amount to be set by the court, apparently adequate to defray all fees, compensation, and other expenses authorized by these regulations. If the amount of the deposit is later found to be insufficient, the commissioner should so notify the Department of State and should retain the commission and other papers until he is notified by the Department that a sufficient amount has been deposited. If the amount of the deposit exceeds the aggregate amount of fees, compensation, and other expenses authorized by these regulations, the Department will return the excess to the party, or parties, entitled thereto. The commissioner should pay witnesses, counsel, interpreter, or translator, and other expenses authorized by this part, from the proceeds of a check which the disbursing officer for his area will be authorized to draw on the Treasurer of the United States.

§ 136.71 *Fees for letters rogatory executed by officials in the United States.* Arrangements for the payment of fees should be made directly with the court in the United States by the party in the foreign country at whose request the depositions are taken, either through his legal representative in the United States or through the appropriate diplomatic or consular officer of his country in the United States. (See § 136.67 regarding

the execution of letters rogatory in the United States.)

MISCELLANEOUS NOTARIAL SERVICES

§ 136.72 *Services in connection with patents and patent applications*—(a) *Affidavit of applicant.* The form of the affidavit of an applicant for a United States patent depends on who is making the application, the type of invention, and the circumstances of the case. Officers of the Foreign Service are not responsible for the correctness of form of such affidavits, and should not endeavor to advise in their preparation. Persons who inquire at a Foreign Service post regarding the filing of patent applications may be referred to the pamphlet entitled "General Information Concerning Patents", if copies thereof are available at the post.

(b) *Oath or affirmation of applicant*—(1) *Authority to administer oath or affirmation.* When an applicant for a patent resides in a foreign country, his oath, or affirmation may be made before any "minister, chargé d'affaires, or consul holding commission under the Government of the United States, or before any notary public, judge, or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of a diplomatic or consular officer of the United States." (R. S. 4892, sec. 2, 32 Stat. 1226, sec. 3, 34 Stat. 100, sec. 3, 46 Stat. 376; 35 U. S. C. 35.) (See paragraph (c) of this section regarding authentication of the authority of a foreign official.) The term "consul" in the provision of Federal law quoted in this section is construed by the Patent Office to mean any consular officer of the United States. A notary or other official in a foreign country who is not authorized to administer oaths is not qualified to notarize an application for a United States patent.

(2) *Form of oath or affirmation.* See §§ 136.19 and 136.20 for usual forms of oaths and affirmations.

(3) *Execution of jurat.* In executing the jurat, the officer should carefully observe the following direction with regard to ribboning and sealing:

> When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

(Rule 66, Rules of Practice of the United States Patent Office.)

(c) *Authentication of authority of foreign official*—(1) *Necessity for authentication.* When the affidavit required in connection with a patent application has been sworn to or affirmed before an official in a foreign country other than a diplomatic or consular officer of the United States, an officer of the Foreign Service must authenticate the authority of the official administering the oath or affirmation. (R. S. 4892, sec. 2, 32 Stat. 1226, sec. 3, 34 Stat. 100, sec. 3, 46 Stat. 376; 35 U. S. C. 35.). If the officer of the Foreign Service cannot authenticate the authority of the official administering the oath or affirmation, the document should be authenticated by a superior foreign official, or by a series of superior foreign officials if necessary. The seal and signature of the foreign official who affixes the last foreign authentication to the document should then be authenticated by the officer of the Foreign Service.

(2) *Use of permanent ink.* All papers which will become a part of a patent application filed in the United States Patent Office must be legibly written or printed in permanent ink. (Rule 52, Rules of Practice of the United States Patent Office.) Consular certificates of authentication executed in connection with patent applications should preferably be prepared on a typewriter; they should not be prepared on a hectograph machine.

(d) *Certification of authority of foreign executor or administrator acting for deceased inventor*—(1) *Necessity for certification.* When an executor or administrator, duly authorized under the law of any foreign country to administer upon the estate of a deceased inventor not domiciled in the United States at the time of his death, desires to make application for a patent in the United States, his authority to act as executor or administrator must be proved by a certificate of a diplomatic or consular officer of the United States. (R. S. 4896, 30 Stat. 915, sec. 3, 32 Stat. 1226, 35 Stat. 245; 35 U. S. C. 46.) No fee is prescribed in the Tariff of United States Foreign Service Fees for the execution of the foregoing certificate.

(2) *Supporting documents.* The diplomatic or consular officer's certificate must be recorded in the United States Patent Office, but the documents exhibited to the officer as proof of the authority of the executor or administrator to act in the premises should not be attached to the certificate and need not accompany said certificate.

(e) *Assignments of patents and applications for patents.* An application for a patent, or a patent, or any interest therein, may be assigned in law by an instrument in writing. The applicant, or the patentee, or his assigns or legal representatives, may grant and convey an exclusive right under the application for patent, or under the patent, to the whole or any specified part of the United States. Any such assignment, grant, or conveyance of any application for patent, or of any patent, may be acknowledged, in a foreign country, before any secretary of legation or consular officer authorized to administer oaths or to perform notarial acts; and the certificate of acknowledgment under his hand and official seal constitutes prima-facie evidence of the execution of such assignment, grant, or conveyance. (R. S. 4898 sec. 5, 29 Stat. 693, sec. 6, 42 Stat. 391, 55 Stat. 634; 35 U. S. C. 47.) No provision is made for the execution of such assignment, grant, or conveyance before a foreign notary or other foreign official.

(f) *Fees.* The fees which should be charged for notarial services involved in the execution of patent applications depend upon the nature of the notarial services, that is, whether they be oaths, authentications, or some other type of service. The applicable items of the Tariff of United States Foreign Service Fees where oaths, authentications, and acknowledgments are concerned, are mentioned in §§ 136.43, 136.46, and 136.45.

(g) *Procedure in case fee stamps are lost.* If fee stamps affixed to a consular certificate which forms a part of a patent application become lost before the application is received in the Patent Office, the application may be filed for examination but will not be given final consideration until the defect is corrected. Since it would be improper to issue new fee stamps to replace those lost, a statement may be issued to the person applying for the patent or to his legal representative.

§ 136.73 *Services in connection with trade-mark registrations*—(a) *Authority and responsibility.* Acknowledgments and oaths required in connection with applications for registration of trademarks may be made, in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country whose authority must be proved by a certificate of a diplomatic or consular officer of the United States. (Sec. 11, 60 Stat. 432; 15 U. S. C. 1061.) The responsibility of officers of the Foreign Service in this connection is the same as that where notarial services in connection with patent applications are involved (see § 136.72 (a)). (See § 136.72 (b) regarding the authentication of the authority of a foreign official who performs a notarial service in connection with a patent application.)

(b) *Fees.* The fees which should be charged for notarial services involved in registering trade-marks depend upon the nature of the notarial services; that is, whether they be oaths, acknowledgments, or some other type of service. The applicable items of the Tariff of United States Foreign Service Fees where oath and acknowledgments are concerned, are mentioned in §§ 136.43 and 136.45.

§ 136.74 *Services in connection with United States securities or interests therein*—(a) *Authority and responsibility.* Assignments or requests for payment of United States securities, or securities for which the Treasury Department acts as transfer agent, or powers of attorney in connection therewith where authorized by the Treasury Department, should, in a foreign country, be executed before a United States consular or diplomatic officer. However, if they are executed before a foreign official having power to administer oaths, the Treasury Department requires that the official character and jurisdiction of the foreign official be certified by a United States diplomatic or consular officer. (See §§ 136.36 to 136.41 on authentications.)

(b) *Fees.* Officers of the Foreign Service should charge no fees for notarial services they perform in connection with the execution of documents, including the certification or authentication of documents where necessary, which affect United States securities or securities for which the Treasury Department acts as transfer agent, or which may be required in the collection of interest thereon. Item 29 of the Tariff of United States Foreign Service Fees should be considered to apply in all such cases.

§ 136.75 *Services in connection with income tax returns*—(a) *Responsibility.* Officers of the Foreign Service are authorized to perform any and all notarial services which may be required in connection with the execution of Federal, state, territorial, municipal, or insular income tax returns. Officers should not give advice on the preparation of tax returns.

(b) *Fees.* No charge should be made for services performed in connection with income tax returns (see item 39 of the Tariff of the United States Foreign Service Fees).

COPYING, RECORDING, TRANSLATING AND PROCURING DOCUMENTS

§ 136.76 *Copying documents* — (a) *Consular authority.* The consular officer is authorized to have documents, or abstracts therefrom, copied at a Foreign Service post, if he deems it advisable and it is practicable to do so. This service frequently is necessary in connection with the performance of certain notarial acts, such as the certification of copies of documents.

(b) *Fees.* For preparing a copy of a document, a fee of fifty cents per hundred words or fraction thereof must be charged, as prescribed in item 34 of the Tariff of United States Foreign Service Fees, unless provision is made elsewhere in the Tariff of Fees for performing the service without charge. (See § 136.48 regarding the performance of this service gratis under item 38 of the Tariff of Fees.) When a copy is prepared on a printed form, the copying fee should be charged for the total number of words in the copy, including the printed words. The provision in item 34 of the Tariff of Fees for "the typing of official forms where requested and where such service is not included in any other item of this tariff" applies to such services as the preparation of a Petition for Issuance of Immigration Visa on Form I–133, and applications for the extension of re-entry permits.

§ 136.77 *Recording documents*—(a) *Consular authority.* Consular officers may, at their discretion, accept for recording in the Miscellaneous Record Book of the office concerned unofficial documents such as deeds, leases, agreements, wills, and so on. The object of this service is primarily to afford United States citizens and interests the means of preserving, in official custody, records of their business and other transactions where other suitable facilities are not available locally for making such records. The recording of unofficial documents is not a notarial service, strictly speaking; however, the certifying of copies of documents thus recorded is a notarial service.

(b) *Recording procedure.* Generally, before accepting a document for recording the consular officer should require satisfactory proof of its genuineness. The document should be copied, word for word, in the Miscellaneous Record Book. At the close of the record a statement that it is a true copy of the original should be entered and signed by the consular officer who copies or compares the record. In the margin of the first page where the document is recorded, the consular officer should note the following data:

(1) By whom the document is presented for recording;

(2) On whose behalf the service is requested;

(3) Date and hour of presentation for recording;

(4) How the authenticity of the document was proved (where appropriate); and

(5) The name of the person by whom recorded (in his proper signature) and the name of the consular officer with whom compared (in his proper signature).

(c) *Certificate of recording.* Ordinarily, a certificate of recording need not be issued. The original document may simply be endorsed: "Recorded at (name and location of consular office) this ------ day of ----------, 19--, in (here insert appropriate reference to volume of Miscellaneous Record Book)". Below the endorsement should appear the notation regarding the amount of the fee collected, the tariff number, and the canceled fee stamps. (See paragraph (d) of this section regarding the applicable item of the Tariff of United States Foreign Service Fees.) When a certificate of recording is requested, the consular officer may issue it, if he sees fit to do so. The certificate may be either entered on the document, if space permits, or appended to the document as a separate sheet in the manner prescribed in § 136.17.

(d) *Fees.* For recording unofficial documents at a Foreign Service post, a fee of 50 cents per 100 words or fraction thereof must be charged, as prescribed in item 37 of the Tariff of United States Foreign Service Fees. No fee should be charged for issuing a certificate of recording as described in paragraph (c) of this section.

§ 136.78 *Translating documents.* Officers of the Foreign Service are not authorized to translate documents or to certify to the correctness of translations. (However, see § 136.56 with regard to interpreting and translating services which may be performed in connection with depositions.) They are authorized to administer to a translator an oath as to the correctness of a translation; to take an acknowledgment of the preparation of a translation; and to authenticate the seal and signature of a local official affixed to a translation. Separate fees should be charged for each of these services as indicated in §§ 136.43, 136.45 and 136.46.

§ 136.79 *Procuring copies of foreign public documents*—(a) *Nature of services.* When requested to do so by United States citizens or by persons acting in behalf of United States citizens, a consular officer should endeavor to obtain from foreign officials copies of birth, death, and marriage certificates, or copies of other public records, such as divorce decrees, probated wills, and so on. The interest of the party requesting the document should be clearly indicated, and there should be good reason for asking for the consular officer's assistance. Persons requesting documents for use in the preparation of family trees or in the compilation of genealogical studies should be referred to a local attorney or to a genealogical research bureau if one is available.

(b) *Payment of expenses involved*—(1) *Official funds not to be used.* The use of official funds to pay fees for the issuance of copies of foreign public documents at the request of private persons is prohibited.

(2) *Payment of fees by Federal Government.* Requests for foreign documents emanating from departments or agencies of the Federal Government will normally be handled through the Department of State. The Department will in such instances issue appropriate instructions with respect to the payment of whatever local fees may be charged if the documents cannot be obtained gratis from the local authorities.

(3) *Payment of fees by State or municipal Governments.* Should State, county, municipal or other authorities in the United States besides the Federal Government request the consular officer to obtain foreign documents, and express willingness to supply documents gratis in analogous circumstances, the consular officer may endeavor on that basis to obtain the desired foreign documents gratis. Otherwise, such authorities should be informed that they must make the same payment, or the same advance deposit, which a private person must make (see subparagraph (4) of this paragraph), to cover the fees charged by foreign officials and any fees which it may be necessary for the consular officer to charge according to the provisions of the Tariff of United States Foreign Service Fees.

(4) *Payment of fees by private persons.* Before a consular officer endeavers to obtain a copy of a foreign public document in behalf of a private person, the person requesting the document should make a deposit of funds with the officer (or with the Department of State, if the request is made through the Department) in an amount sufficient to defray any fees which may be charged by the local authorities as well as the Foreign Service fee for authenticating the document, should authentication be desired.

§ 136.80 *Procuring copies of documents from the United States.* A person inquiring at a Foreign Service post with regard to the procurement of birth or death certificates from the United States should be advised to write to the Vital Statistics Office of the State or Territory where the birth or death occurred, or to the appropriate diplomatic or consular officer of his own country. The digests of State and Territorial laws in the Martindale-Hubbell Law Direc-

tory and in The Lawyers Directory contain information with respect to the State and Territorial offices where birth and death records are maintained, and in some instances they indicate the cost of obtaining birth and death certificates.

QUASI-LEGAL SERVICES

§ 136.81 *Performance of legal services*—(a) *Legal services defined.* The term "legal services" means services of the kind usually performed by attorneys for private persons and includes such acts as the drawing up of wills, powers of attorney, or other legal instruments.

(b) *Performance usually prohibited.* Officers of the Foreign Service should not perform legal services except when instructed to do so by the Secretary of State, or in cases of sudden emergency when the interests of the United States Government might be involved, or in cases in which no lawyer is available and refusal to perform the service would result in the imposition of extreme hardship upon a United States citizen. There is no objection, however, to permitting persons to use the legal references in the Foreign Service office giving specimen forms of wills, powers of attorney, etc.

(c) *Refusal of requests.* In refusing requests for the performance of legal services, an officer of the Foreign Service should cite these regulations and should state clearly his reasons for refusing to act. In appropriate cases, the officer may furnish the inquirer with a copy of the annual list of attorneys (see § 136.83) practicing in the consular district or he may refer the inquirer to the Department for a list of attorneys.

(d) *Waiver of responsibility.* When an officer of the Foreign Service accedes to a request for the performance of a legal service, he should inform the applicant that the service is performed at the latter's risk and without any responsibility on the part of the United States Government or the officer performing the service.

(e) *Fees.* No fee should be charged for any legal services that may be performed under these regulations, beyond the fee for copying prescribed in item 34 of the Tariff of United States Foreign Service Fees. (See § 136.11 (b) regarding the preparation of legal documents by consular officers.)

§ 136.82 *Recommending attorneys*—(a) *Agreements with attorneys in consular district prohibited.* Officers of the Foreign Service should not enter into agreements with attorneys in their districts respecting the performance of legal services for persons applying to a Foreign Service post therefor. When appropriate, lists of attorneys practicing in the district who might be of assistance may be furnished to applicants. (See § 136.83.)

(b) *Recommendation of attorneys in United States prohibited.* When any person in the district of a Foreign Service post desires to have the name of an attorney in the United States, the officer at the post may refer him to the lists of attorneys at his disposal, but he should not recommend any particular attorney.

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§ 136.83 *Submission of annual list of attorneys*—(a) *Reporting requirement.* Each Foreign Service post should report at the beginning of each calendar year on attorneys of United States and foreign nationality who are active practitioners of good repute residing in districts of the post, and who are believed to be qualified to handle litigation on behalf of United States citizens or firms. In instances where it is known that the rules of the foreign bar association prohibit advertising by association members, the consular officer may, when communicating with the attorneys, give assurance that the list of attorneys will not be published but will only be used privately, and upon request, to assist United States citizens who may be in need of legal counsel in the foreign country.

(b) *Furnishing copies of list.* Single copies of lists of attorneys may be furnished directly to private persons or firms by Foreign Service posts. However, requests emanating from the United States for lists of attorneys may be referred to the Department together with a letter of acknowledgment to the person making the request. In all instances in which the lists of attorneys are intended to be used for secondary distribution, the requests should be referred to the Department in this manner.

§ 136.84 *Legal process defined.* Legal process means a writ, warrant, mandate, or other process issuing from a court of justice. The term includes subpoenas, citations, and complaints.

§ 136.85 *Service of legal process usually prohibited.* The service of legal process is not normally a Foreign Service function. Except as provided in §§ 136.86 to 136.91, or as may be specifically authorized by the Department in special cases, officers of the Foreign Service are prohibited from serving legal process or appointing other persons to do so.

§ 136.86 *Consular responsibility for serving subpoenas.* Unless such action is prohibited by the law of the foreign country, officers of the Foreign Service are required to serve subpoenas issued by United States courts upon citizens or residents of the United States who have been personally notified in a foreign country to appear to give testimony in answer to letters rogatory issued from the said United States court and who have failed or neglected to do so, or who, having appeared, have refused to give testimony. Officers of the Foreign Service are also required, unless doing so would be contrary to the law of the foreign country, to serve subpoenas issued by United States courts upon citizens or residents of the United States who are beyond the jurisdiction of the United States and whose testimony in a criminal proceeding is desired by the Attorney General. (Sec. 1, 62 Stat. 949; 28 U. S. C. Sup. 1783.)

§ 136.87 *Consular responsibility for serving orders to show cause.* Officers of the Foreign Service are required to serve orders to show cause issued in contempt proceedings on a person who has failed or neglected to appear in answer to a subpoena served in accordance with the provisions of § 136.86. (Sec. 1, 62 Stat. 949; 28 U. S. C. Sup. 1784.)

§ 136.88 *Consular procedure.* With regard to the serving of subpoenas and orders to show cause referred to in §§ 136.86 and 136.87, section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 819, 28 U. S. C. Sup. 1783), provides that the subpoena shall designate the time and place for appearance before the United States court, and shall issue to any consular officer of the United States in the foreign country. The consular officer is required to make personal service of the subpoena and any order to show cause, rule, judgment or decree on the request of the United States court or its marshal, and to make return thereof to such court after tendering to the witness his necessary travel and attendance expenses, which will be determined by the court and sent with the subpoena. The consular officer should make return by sending the appropriate documents to the Department for transmission to the court. When the subpoena or order is forwarded to the officer, it is usually accompanied by instructions directing exactly how service should be made and how the return of service should be executed. These instructions should be followed carefully.

§ 136.89 *Fees for service of legal process.* No charge should be made for serving a subpoena or order to show cause. The taking of the affidavit of the officer making the service, or any other notarial service which may be involved in making the return, should be performed without charge under item 38 of the Tariff of United States Foreign Service Fees, the service number should appear, as in the case of other certificates, on the return of the subpoena or other legal documents.

§ 136.90 *Delivering documents pertaining to fraudulent naturalization.* Officers of the Foreign Service should deliver, or assist in delivering, to designated persons, documents relating to fraudulent naturalization when such documents are forwarded by duly authorized officials of the United States courts. The responsibility for furnishing detailed instructions on the procedure to be followed in delivering such documents rests with the court or with the United States attorney concerned, and officers should follow such instructions carefully.

§ 136.91 *Service of documents at request of Congressional committees.* Officers of the Foreign Service have no authority to serve upon persons in their consular districts legal process such as subpoenas or citations in connection with Congressional investigations. All requests for such service should be referred to the Department of State.

§ 136.92 *Service of legal process where required by State law.* In exceptional cases it may be found that a particular State statute will require service of legal process in foreign countries by a United States consular officer or by a person appointed by him, and will allow no other method of making service. Before

making service or appointing someone else to do so in such cases, the officer of the Foreign Service should request special authorization from the Department of State.

§ 136.93 *Notarial services connected with service of process by other persons.* (a) An officer of the Foreign Service may administer an oath to a person making an affidavit to the effect that legal process has been served. The fee of $2.00 established by item 24 of the Tariff of United States Foreign Service Fees must be charged for this service.

(b) When an affidavit stating that legal process has been served is sworn to before a foreign notary or other official, an officer of the Foreign Service may authenticate the official character of the person administering the oath. (See §§ 136.36 to 136.41 regarding authentications generally and suggested forms for certificate of authentication.) The fee of $2.00 established by item 31 of the Tariff of United States Foreign Service Fees must be charged for this service.

§ 136.94 *Replying to inquiries regarding service of process or other documents.* Officers should make prompt and courteous replies to all inquiries regarding the service of legal process or other documents of that nature, and should render such assistance as they properly can to interested persons.

§ 136.95 *Transportation of witnesses to the United States.* Officers of the Foreign Service may at times be called upon to assist in arranging for the transportation to the United States of persons in foreign countries whose testimony is desired by the Attorney General in a case pending in a Federal court. Requests that the travel of such persons be facilitated originate in the Department of Justice, and special instructions in each case are transmitted to the appropriate Foreign Service post by the Department of State.

These regulations shall become effective on August 1, 1952.

Date of issuance: June 13, 1952.

[SEAL] SAMUEL D. BOYKIN,
Director,
Office of Security and Consular Affairs.

[F. R. Doc. 52-6762; Filed, June 19, 1952; 8:52 a. m.]

TITLE 32—NATIONAL DEFENSE

Subtitle A—Office of the Secretary of Defense

PART 71—ORGANIZED UNIT AND SATISFACTORY PARTICIPATION THEREIN DEFINED

Part 71 is revised to read as follows:

Sec.
71.1 Organized unit.
71.2 Satisfactory participation in an organized unit.

AUTHORITY: §§ 71.1 and 71.2 issued under sec. 6, 62 Stat. 610, as amended, sec. 16, 62 Stat. 625; 50 U. S. C. App. Sup. 456, 466.

§ 71.1 *Organized unit.* For purposes of the definition of an "organized unit" of a reserve component under section 16 (h) of the Universal Military Training and Service Act, as amended, thirty-five (35) scheduled drills, or training periods, or days of active Federal service, or any combination thereof, per year, are hereby prescribed as a minimum requirement.

§ 71.2 *Satisfactory participation in an organized unit.* The Secretary of the Department concerned shall determine for the respective reserve components of that Department what constitutes satisfactory participation in such organized units in accordance with existing law: *Provided however*, That for purposes of satisfactory attendance in an organized unit within the meaning of section 6 (c) (1) of the Universal Military Training and Service Act, as amended, not more than ten (10) percent absence per year from scheduled drills or training periods, or periods of equivalent instruction, shall be permitted by any Department.

For the Secretary of Defense.

MARSHALL S. CARTER,
Brigadier General, U. S. Army,
Director,
Executive Office of the Secretary.

[F. R. Doc. 52-6734; Filed, June 19, 1952; 8:45 a. m.]

PART 73—INDUCTION STANDARDS

MISCELLANEOUS AMENDMENTS

The following amendments to Subtitle A, Title 32, of the Code of Federal Regulations, are hereby prescribed:

Section 73.2 is amended to read as follows:

§ 73.2 *Minimum mental level.* The minimum mental level for induction shall be a percentile score of 10 (standard score 65) on the Armed Forces Qualification Test.

Section 73.3 *Modification of AR 40-115 items not applicable to the Air Force and Navy* is revoked.

(Sec. 4, 62 Stat. 605, as amended; 50 U. S. C. App. Sup. 454)

For the Secretary of Defense.

MARSHALL S. CARTER,
Brigadier General, U. S. Army,
Director,
Executive Office of the Secretary.

[F. R. Doc. 52-6733; Filed, June 19, 1952; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter III—Office of Price Stabilization, Economic Stabilization Agency

[General Ceiling Price Regulation, Amdt. 1 to Supplementary Regulation 73]

GCPR, SR 73—RAIL FREIGHT RATE INCREASES ON GRAIN, GRAIN PRODUCTS, GRAIN BY-PRODUCTS, AND ARTICLES TAKING SAME RAIL FREIGHT RATE

RAIL FREIGHT RATE INCREASES ON GRAIN PRODUCTS

Pursuant to the Defense Production Act of 1950, as amended, Executive Order 10161, and Economic Stabilization Agency General Order No. 2, this amendment to Supplementary Regulation 73 to the General Ceiling Price Regulation is hereby issued.

STATEMENT OF CONSIDERATIONS

This amendment permits the sellers of grain, grain products and grain by-products covered by Supplementary Regulation (SR) 73 to the General Ceiling Price Regulation (GCPR) to reflect in their ceiling prices the recent increase in rail freight rates authorized by the Interstate Commerce Commission on April 11, 1952, in Ex Parte 175, and effective May 17, 1952.

Under the GCPR, as explained in Interpretation 1, a seller may pass on to his buyers increases in outbound transportation charges in general only if he sold on an f. o. b. basis during the base period or added to his mill price only the actual transportation cost incurred. Increases in inbound transportation costs, incurred by the seller in obtaining delivery from his supplier, must be absorbed by the seller. SR 73, issued on October 22, 1951, permitted certain additional sellers (of grain and grain products) to reflect in their ceiling prices the 6 percent increase in freight rates authorized by the I. C. C. on August 2, 1951. This amendment makes similar provision in regard to the recent rate increase.

As stated in the Statement of Considerations accompanying SR 73, under the GCPR sellers of grain products are unable to pass on increases in outbound freight charges since their selling prices customarily include a freight factor representing the *average* freight to a particular destination rather than the *actual* transportation cost incurred on the particular shipment. Grain products are usually shipped on a "transit balance" rail rate under which the outbound rate applicable to the shipment varies with the origin point of the inbound shipment of raw grain. Since, at the time of sale of the product it is not possible to determine what transit billing will be available for use on a particular shipment, processors customarily compute average freight charges to various points in order to be able to set firm prices. Moreover, there is a wide variation among various sellers in the amount of the inbound freight increase which must be absorbed under the GCPR. For example, an Eastern flour miller incurs a much higher inbound freight charge on Kansas wheat than does the Kansas miller although both sell flour on a competitive basis in Eastern consuming markets.

As explained more fully in the Statement of Considerations accompanying SR 73, since grain and grain products must move over long distances to reach the consuming markets, transportation charges represent a large percentage of the total costs involved in producing the finished products. Since processors and other handlers of grain and grain products customarily operate on a very low unit margin of profit over costs, historically they have reflected transportation charges in their selling prices. To require absorption of increased freight costs would seriously impair and, in some cases, eliminate this historically low unit profit margin.

This amendment uses the method for computing the allowable increase in ceiling price to reflect the increased freight rate which was originally provided in SR 73 in connection with the prior rate increase. Thus, the increase must be computed on the basis of the charge used during the GCPR base period, which, according to the shipper's records, represents the average of inbound and outbound rail freight rate costs.

Under this amendment, of course, no adjustment of the f. o. b. price for inbound freight may be made for inbound shipments received on the rail freight rate in effect prior to the increase. Under transit billing, certain outbound shipments taking place after the effective date of the freight rate increases are still governed by the rates in effect prior to the increase. In this amendment, as in the original section 4 of SR 73, the permission to add freight rate increases to previous ceiling prices is limited so as to require the sellers to use the former ceiling price for outbound shipments to which the previous freight rate is applicable—notwithstanding that the outbound shipment actually takes place after the effective date of the increase.

This amendment adds the products covered by SR 86, SR 92 and SR 31, Revision 2, to the list of products in section 2 (c) to which SR 73 is inapplicable. SR 86 to the GCPR sets ceiling prices for producers of the feed by-products of the wet corn milling process. Section 2 of SR 86 fixes ceiling prices at Chicago, Kansas City, and St. Louis, and provides that the ceiling price at any other point is determined by adding a transportation charge equal to the lowest grain products reshipping rate, or, if none, the lowest carload rate on grain products to such point from whichever of the above points results in the lowest ceiling at point of delivery. This charge may be computed at current rail freight rates and will, of course, vary with changes in freight rates. SR 92 to the GGPR fixes a ceiling price at Corpus Christi, Texas, for the feed by-products of the wet milo milling process and provides that the ceiling price at any other point is determined by adding the actual transportation costs incurred in shipping the commodity to such point from Corpus Christi. SR 31, Revision 2, to the GCPR provides that a seller of the cottonseed products covered by that regulation must determine the transportation charge which he may reflect in his ceiling price on the basis of the rates in effect in the GCPR base period.

In the formulation of this amendment, there has been consultation with industry representatives, including trade association representatives, to the extent practicable and consideration has been given to their recommendations.

In the judgment of the Director of Price Stabilization, the provisions of this amendment are generally fair and equitable and are necessary to effectuate the purposes of Title IV of the Defense Production Act of 1950, as amended.

AMENDATORY PROVISIONS

Supplementary Regulation 73 to the General Ceiling Price Regulation is amended in the following respects:

1. Section 1 is amended to read as follows:

SECTION 1. *What this supplementary regulation does.* This supplementary regulation permits increases in the ceiling prices of commodities taking the rail freight rate applicable to grain, grain products, grain by-products and articles in the same rail freight rate class (such commodities being collectively called "grain products" in this supplementary regulation), provided that these ceiling prices are now fixed by the General Ceiling Price Regulation, its amendments and its supplementary regulations, and are either delivered prices which include average freight to a particular destination, or are f. o. b. mill prices to which is added a freight factor representing average freight to a particular destination. The permitted increases in ceiling prices are intended to reflect increases in the rail transportation costs of grain products resulting from the general increases in rail freight rates authorized by the Interstate Commerce Commission on August 2, 1951, and April 11, 1952.

2. Section 2 (c) is amended to read as follows:

(c) *Products not covered.* This supplementary regulation does not apply to the following:

(1) Processors of the soybean products covered by SR 3 to the GCPR.

(2) Producers of the feed by-products of the wet corn milling process covered by SR 86 to the GCPR.

(3) Producers of the feed by-products of the wet milo milling process covered by SR 92 to the GCPR.

(4) Processors and distributors of cottonseed products covered by SR 31, Revision 2, to the GCPR.

3. Step 4 and Step 6 of section 3 (a) are amended to read as follows:

Step 4. Multiply the figure ascertained under Step 1 above by 112 percent.

Step 6. Multiply the figure ascertained under Step 2 above by 112 percent.

4. Section 4 (a) is amended to read as follows:

(a) On any sale of a grain product which you ship on the rail freight rate in effect prior to September 12, 1951 (the effective date of the rail freight rate increase authorized by the I. C. C. order of August 2, 1951), you may not take any increase in your ceiling price under this supplementary regulation, even though you ship your grain product after September 12, 1951. *Example:* If, prior to September 12, 1951, 1,000 cwt. of wheat is shipped to you, you may not increase your ceiling price on 1,000 cwt. of flour or millfeed which is shipped by you on a transit balance rate based upon the rail freight rate in effect prior to the increase, even though you ship your flour or millfeed after the effective date of the increase.

On any sale of a grain product which you ship on a rail freight rate which includes the rail freight rate increase authorized by the I. C. C. order of August 2, 1951, but does not include the rail freight rate increase authorized by the I. C. C. order of April 11, 1952, you calculate the permitted increase in your ceiling price under section 3 (a) above. However, under Steps 4 and 6 of section 3 (a), you must use 106 percent as your multiplier.

Example: You receive 1,000 cwt. of wheat shipped on the rail freight rate which was originally increased 6 percent on September 12, 1951 (the effective date of the rail freight increase authorized by the I. C. C. order of August 2, 1951). After May 17, 1952 (the effective date of the rail freight increase authorized by the I. C. C. order of April 11, 1952) you sell 1,000 cwt. of flour or millfeed shipped on transit billing the rate for which is based on the inbound wheat shipment. Under this supplementary regulation you may increase your ceiling price on this sale to reflect the first rate increase, but not the second, because although the outbound shipment takes place after May 17, 1952, the freight rate applicable to this particular shipment is still the one in effect prior to May 17, 1952. Thus, for such a sale, under Steps 4 and 6 of section 3 (a), you multiply by 106 percent the figures you used during the GCPR base period to represent your average inbound and outbound rail freight rate cost.

(Sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154)

Effective date. This amendment shall become effective June 24, 1952.

ELLIS ARNALL,
Director of Price Stabilization.

JUNE 19, 1952.

[F. R. Doc. 52-6849; Filed, June 19, 1952; 4:00 p. m.]

[General Ceiling Price Regulation, Supplementary Regulation 107]

GCPR, SR 107—CEILING PRICE ADJUSTMENT FOR CANNED BABY AND JUNIOR FOODS

Pursuant to the Defense Production Act of 1950, as amended, Executive Order 10161 and Economic Stabilization Agency General Order No. 2, this Supplementary Regulation to the General Ceiling Price Regulation is hereby issued.

STATEMENT OF CONSIDERATIONS

This supplementary regulation permits processors of baby food to determine adjusted ceiling prices for canned baby and junior foods by adding specified amounts to ceiling prices established under the General Ceiling Price Regulation (GCPR).

The baby food industry is comprised of fewer than ten companies who produce baby food, with only two of these companies processing meat items of baby food. The industry has historically sold its products on a uniform price line basis. This means many different items have been sold at the same price, regardless of differences in cost of the individual items. There are five price lines now in general use, namely, strained baby food in tin containers, strained baby food in glass containers, chopped (or junior) foods in tin containers, chopped foods in glass containers and meat items which are packed in one size only in tin con-

tainers. The baby food meats are items which have been introduced since World War II.

This supplementary regulation provides for calculation of ceiling prices for new items in a manner which will enable processors to continue their practice of selling on a uniform price line basis and also authorizes a ceiling price increase which has been found to be required by the industry earnings standard.

Because of problems and factors peculiar to these industries, OPS has adopted the policy of applying the earnings standard on a major commodity group basis in the fruit and vegetable processing industries. In this case the major commodity group is canned baby and junior foods. The ceiling price increase authorized by this regulation is based upon a cost and profit study of baby food processors made by OPS.

With respect to the baby food industry, it has been determined that an adjustment which will permit the industry a dollars-and-cents net return per unit of sale equivalent to 85 percent of the average return for the three best years from 1946 to 1949 will be substantially equivalent to the adjustment which would be computed by relating net profits before taxes to net worth. For the baby food industry these years were the years 1947–1949 inclusive. In determining the average base period net profit per unit, the years in which one or more of the commodities were sold at a loss were considered at zero in line with the treatment of loss years under the industry earnings standard.

The adjustments afforded by this supplementary regulation were determined on the basis of costs as of the summer of 1951, which is the most recent period for which data are available. In addition, however, recent known cost increases have been taken into consideration. These include the freight rate increases of August 28, 1951, and May 2, 1952, the wage rate increase incurred in December 1951, by the producers of baby meat items, and the increase in glass containers recently authorized by this agency to glass container manufacturers under the industry earnings standard.

The Director of Price Stabilization has consulted with industry representatives, including trade association representatives, and the Canned Baby Food Industry Advisory Committee before issuing this supplementary regulation and has given consideration to their recommendations. It is his judgment that the ceiling prices and provisions of this supplementary regulation are generally fair and equitable, comply with all applicable provisions of the Defense Production Act of 1950, as amended, and are necessary to effectuate the purposes of that act.

REGULATORY PROVISIONS

Sec.
1. What this supplementary regulation does.
2. Adjusted ceiling prices for processors' sales of canned baby and junior foods.
3. Processors' ceiling prices for new items falling within categories sold during the base period.
4. Relationship of this supplementary regulation to the General Ceiling Price Regulation.
5. Definitions.

AUTHORITY: Sections 1 to 5 issued under sec. 704, 64 Stat. 816 as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803 as amended, 50 U. S. C. App. Sup. 2101–2110, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.

SECTION 1. *What this supplementary regulation does.* This supplementary regulation modifies processors' ceiling prices for canned baby and junior foods by allowing processors to calculate adjusted ceiling prices by adding specific amounts to their ceiling prices as determined under the General Ceiling Price Regulation (GCPR). Section 2 sets forth the cents per dozen which may be added to your ceiling price as established under the GCPR if you are a processor of canned baby and junior foods. Section 3 provides a method of determining ceiling prices for items of canned baby or junior food which you did not sell during the GCPR base period.

SEC. 2. *Adjusted ceiling prices for processors' sales of canned baby and junior foods.* If you are a processor of canned baby and junior foods you shall calculate adjusted ceiling prices for all items of canned baby and junior foods for sale to each class of purchaser by adding to your ceiling prices as established under the GCPR, without reference to any adjustment under section 11 of that regulation, the following appropriate amount:

	Cents per dozen
All meat items of baby or junior foods	8½
All other items of baby or junior foods packed in tin containers, excluding dry cereals	3½
All other items of baby or junior foods packed in glass containers, excluding dry cereals	4½

The result is your adjusted ceiling price per dozen containers for each item of baby food to each class of purchaser.

SEC. 3. *Processors' ceiling prices for new items falling within categories sold during the base period.* If you wish to add a new item of canned baby or junior food not sold by you during the base period to an established uniform price line of canned baby or junior food of a category which you did sell during the base period, your ceiling price for the new item shall be the ceiling price for the category of canned baby or junior food as established under section 2 of this supplementary regulation to which you are adding the new item. Your ceiling price for the new item shall reflect your customary price differentials including discounts, allowances, premiums and extras which are in effect under the GCPR for the category of canned baby or junior food to which the new item is added.

SEC. 4. *Relationship of this supplementary regulation to the GCPR.* All provisions of the GCPR except to the extent modified by this supplementary regulation shall continue to apply to your sales of canned baby and junior foods.

SEC. 5. *Definitions.* When used in this supplementary regulation the term:

(a) "Canned baby and junior foods" means any strained or chopped foods packaged in hermetically sealed containers and specially prepared for infant or child feeding. Packaged dry cereals and canned fish are excluded.

(b) "Canned meat item" means an item consisting of at least 95 percent by volume of strained or chopped meats and to which seasoning and liquid only have been added.

(c) "Item" means a kind, variety, style of pack or container type or size of canned baby or junior foods.

(d) "Processor" means a person who manufactures any of the kind of baby or junior foods covered by this supplementary regulation. The term includes a person who has the item processed by another and who owns the ingredients immediately prior to and throughout the processing.

Effective date. This Supplementary Regulation 107 shall become effective June 24, 1952.

ELLIS ARNALL,
Director of Price Stabilization.

JUNE 19, 1952.

[F. R. Doc. 52-6850; Filed, June 19, 1952; 4:00 p. m.]

Chapter VI—National Production Authority, Department of Commerce

[CMP Regulation No. 1, Direction 1, as amended June 18, 1952]

CMP REG. 1—BASIC RULES OF THE CONTROLLED MATERIALS PLAN

DIR. 1—PROCEDURES FOR OBTAINING MINIMUM QUANTITIES OF MATERIALS BY PRODUCERS OF CLASS B PRODUCTS

This amended direction under CMP Regulation No. 1 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this direction as amended, consultation with industry representatives has been rendered impracticable due to the need for immediate action and because the direction affects many different industries.

This amendment affects Direction 1, as last amended April 30, 1952, to CMP Regulation No. 1 as follows: A new section 2 is added and sections 2, 3, 4, and 5, are redesignated sections 3, 4, 5, and 6; paragraphs (a) and (b) of redesignated section 3 are amended; paragraph (c) of redesignated section 3 is deleted and a new paragraph (c) is substituted therefor; paragraph (f) of redesignated section 3 is deleted and its provisions are incorporated in new section 2; new paragraphs (d) and (e) are added to redesignated section 3 and paragraphs (d) and (e) are redesignated paragraphs (f) and (g); redesignated sections 4 and 5 are amended. As so amended, Direction 1 to CMP Regulation No. 1 reads as follows:

REGULATORY PROVISIONS

Sec.
1. What this direction does.
2. Definitions.
3. Persons affected by this direction.
4. Use of allotment symbol to obtain controlled materials.
5. Use of rating to obtain production materials other than controlled materials.
6. Certification.

AUTHORITY: Sections 1 to 6 issued under sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup., 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61; 3 CFR, 1951 Supp.; secs. 402, 405, E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR, 1951 Supp.

SECTION 1. *What this direction does.* This direction constitutes a determination by the National Production Authority that producers of Class B products may receive priority assistance under CMP without submitting applications on Form CMP–4B if their total requirements of controlled materials do not exceed a certain maximum. It also establishes a procedure whereby such producers may place authorized controlled material orders for such materials without obtaining an allotment. Such producers shall be subject to all CMP regulations and orders.

SEC. 2. *Definitions.* As used in this direction:

(a) "Product class" means a Product Class Code as shown in the Official CMP Class B Product List.

(b) "Base period use" means the average quarterly use of controlled material by a Class B product producer during the calendar year 1950. In the case of a Class B product producer who has received an adjustment by NPA of his use of controlled material for a period preceding July 1, 1950, it means his average quarterly use of controlled material during such period, as adjusted by NPA, or his average quarterly use of controlled material during the calendar year 1950, whichever is greater.

SEC. 3. *Persons affected by this direction.* (a) Regardless of his base period use, a producer of any Class B product which is listed in the Official CMP Class B Product List may obtain priority assistance without submitting an application on Form CMP–4B with respect to such product for any calendar quarter (except for the third calendar quarter of 1952 as provided in paragraph (e) of this section) in which his total requirements for delivery from suppliers of each kind of controlled material (including controlled material for Class A product components) for the production of that product and all other products in the same product class do not exceed the amounts specified below:

	Second calendar quarter 1952	After second calendar quarter 1952
Carbon steel (including wrought iron).	5 tons	25 tons.
Alloy steel (except stainless steel).	½ ton	1 ton.
Stainless steel	None	None.
Copper and copper-base alloy brass mill products, copper wire mill products, copper and copper-base alloy foundry products and powder.	500 pounds	10,000 pounds.
Aluminum	500 pounds	20,000 pounds.

(b) A producer of any Class B product which is listed in the Official CMP Class B Product List may obtain priority assistance without submitting an application on Form CMP–4B with respect to such product for any calendar quarter (except for the third calendar quarter of 1952 as provided in paragraph (e) of this section) in which his total requirements for delivery from suppliers of each kind of controlled material (including controlled material for Class A product components) for the production of that product and all other products in the same product class do not exceed the amounts specified below:

	Second calendar quarter 1952	After second calendar quarter 1952
Carbon steel (including wrought iron).	30 tons	60 tons.
Alloy steel (except stainless steel).	8 tons	16 tons.
Stainless steel	500 pounds	500 pounds.
Copper and copper-base alloy brass mill products, copper wire mill products, copper and copper-base alloy foundry products and powder.	3,000 pounds	20,000 pounds.
Aluminum	2,000 pounds	40,000 pounds.

Provided, however, That no such producer, unless specifically authorized by NPA, shall avail himself of the self-authorization procedure provided by this paragraph to obtain, during any calendar quarter, a quantity of any one of the above kinds of controlled material which exceeds his base period use of such material in the manufacture of the same product and all other products in the same product class.

(c) Beginning with the third calendar quarter of 1952, a producer of any Class B product which is listed in the Official CMP Class B Product List may obtain priority assistance without submitting an application on Form CMP–4B with respect to such product for any calendar quarter (except for the third calendar quarter of 1952 as provided in paragraph (e) of this section) in which his total requirements for delivery from suppliers of each kind of controlled material (including controlled material for Class A product components) for the production of that product and all other products in the same product class do not exceed the amounts specified below:

Carbon steel (including wrought iron).	60 tons.
Alloy steel (except stainless steel).	16 tons.
Stainless steel	500 pounds.
Copper and copper-base alloy brass mill products, copper wire mill products, copper and copper-base alloy foundry products and powder.	40,000 pounds.
Aluminum	60,000 pounds.

Provided, however, That no such producer, unless specifically authorized by NPA, shall avail himself of the self-authorization procedure provided by this paragraph to obtain, during any calendar quarter, a quantity of any one of the above kinds of controlled material which exceeds 75 percent of his base period use of such material in the manufacture of the same product and all other products in the same product class.

(d) A producer of any Class B product who may and desires to self-authorize under this section but who has already received allotments for the second or a succeeding calendar quarter of 1952 pursuant to application or applications previously submitted for production of such Class B product and others in the same product class, and has placed authorized controlled material orders pursuant to such allotments, must deduct the quantity of orders so placed from the quantity for which he may self-authorize.

(e) A producer of any Class B product who has received allotments of controlled material for the third calendar quarter of 1952 pursuant to an application submitted on Form CMP–4B and whose allotments for one or more kinds of controlled material are less than the quantity for which he otherwise would be entitled to self-authorize for that quarter under this section, may make allotments and place orders for any such material with suppliers for delivery during that quarter only, in an amount equal to the quantity for which he would be entitled to self-authorize, even though his allotments of one or more other kinds of controlled material exceed his self-authorization limits.

(f) A producer of any Class B product who need not submit an application on Form CMP–4B pursuant to this direction shall be subject to all applicable regulations and orders of NPA. For example, he shall make allotments of controlled material to a person producing Class A product components for him in the manner prescribed by CMP Regulation No. 1.

(g) Class A products which a producer has been authorized by NPA to treat as Class B products in accordance with section 24 (b) of CMP Regulation No. 1, and Class A products which are sold to a distributor or for use as maintenance, repair, or operating supplies in accordance with paragraph (b) or (c) of section 15 of CMP Regulation No. 1, shall be deemed Class B products for purposes of this direction. A producer may obtain priority assistance without filing a Form CMP–4B for any calendar quarter in which his total requirements for delivery from suppliers of each kind of controlled material (including controlled material for Class A product components) for the production of all Class A products which are deemed Class B products for purposes of this direction do not exceed the quantities indicated in this section.

SEC. 4. *Use of allotment symbol to obtain controlled materials.* Any producer of Class B products who, pursuant to this direction, may obtain priority assistance without filing a Form CMP–4B, is authorized to use the allotment symbol SU, or such other allotment symbol as NPA may expressly authorize, on delivery orders for controlled materials within the limits set forth in section 3 of this direction. An order so designated, when certified as provided in section 6 of this direction, shall constitute an authorized controlled material order. The quantity of such Class B products which may be produced with controlled materials ob-

tained with the use of the allotment symbol SU, or with such other allotment symbol as NPA may expressly authorize, plus controlled materials properly contained in inventory, shall constitute an authorized production schedule for the purpose of all CMP regulations. A producer who, in accordance with this direction, may place orders for controlled materials in addition to orders which he may place pursuant to allotments which he has received from NPA or from a Claimant Agency, shall use the same allotment number which identifies such allotments, and not the allotment symbol SU, in placing all of his orders for controlled materials.

SEC. 5. *Use of rating to obtain production materials other than controlled materials.* Any producer of Class B products who, pursuant to this direction, may obtain priority assistance without filing a Form CMP–4B, is authorized to use the rating DO–SU, or such other rating as NPA may expressly authorize, on delivery orders for production materials as defined in CMP Regulation No. 3 in accordance with the provisions of that regulation. A producer who may obtain priority assistance pursuant to this direction during a calendar quarter for which he has received allotments of controlled materials from NPA or from a Claimant Agency, shall use the same DO rating assigned to his authorized production schedule, and not the rating DO–SU, in placing all of his orders for production materials.

SEC. 6. *Certification.* Every delivery order placed under the provisions hereof shall contain, in the case of an order for controlled materials, the certification required by section 19 of CMP Regulation No. 1, or, in the case of an order for production materials other than controlled materials, the certification required by section 6 of CMP Regulation No. 3.

This direction as amended shall take effect June 18, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52–6804; Filed, June 18, 1952; 4:16 p. m.]

[NPA Order M–100, Amendment 1 of June 18, 1952]

M–100—RESIDENTIAL CONSTRUCTION

MISCELLANEOUS AMENDMENTS

This amendment to NPA Order M–100 is found necessary and appropriate to promote the National Defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment consultation with industry representatives has been rendered impracticable due to the necessity for immediate action.

This amendment affects section 5 and Schedule I and Schedule II of NPA Order M–100.

NPA Order M–100 is amended in the following respects:

1. Paragraph (a) of section 5 is amended to read as follows:

(a) No person shall use in or in connection with the construction, including the alteration, addition, or extension of any residential structure, whether started before or after the effective date of this amendment, any aluminum controlled material for any ornamental or decorative purpose.

2. Schedules I and II are amended to read:

SCHEDULE I OF NPA ORDER M–100

Types and quantities of controlled materials which may be obtained under the self-authorization procedure and which are the only types and the maximum quantities which may be used in 1- through 4-family residential structures, the construction, alteration, addition, or extension of which is commenced after Mar. 5, 1952.

Type of construction, alteration, addition, or extension	Carbon steel (excluding structural shapes)	Structural shapes, alloy and stainless steel	Copper and copper-base alloys	Aluminum
Construction of residential structures using steel pipe water distribution system, per dwelling unit.	Not more than 2,300 pounds per dwelling unit.	None	Not more than 50 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Construction of residential structures using copper pipe water distribution system, per dwelling unit.	Not more than 1,950 pounds per dwelling unit.	None	Not more than 175 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Construction of residential structures using steel pipe for interior water-supply pipes where local building code requires Type B or K copper tubing for underground water service connection, per dwelling unit.	Not more than 2,135 pounds per dwelling unit.	None	Not more than 110 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Construction of residential structures using copper pipe water distribution system where local building code requires Type B or K copper tubing for underground water service connections, per dwelling unit.	Not more than 1,950 pounds per dwelling unit.	None	Not more than 190 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Construction of residential structures using electrical energy heating systems.	In addition to the amounts of controlled materials allowed above, not more than 30 pounds of copper per dwelling unit.			
Alteration, addition, or extension of existing residential structures per dwelling unit.	Not more than 50 percent of the amounts of controlled materials allowed above for the appropriate type of construction, per dwelling unit.			
Alteration by initial installation of electrical wiring.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 35 pounds of copper per dwelling unit.			
Alteration by initial installation of plumbing with steel pipe water distribution system.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 250 pounds of steel per dwelling unit.			
Alteration by initial installation of plumbing with copper pipe water distribution system.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 125 pounds of steel and 100 pounds of copper per dwelling unit.			

NOTE: Aluminum may be used for conduction of electricity in place of copper on basis of 1 pound of aluminum for each 2 pounds of copper allowed in this schedule. In such event the allowable quantity of copper is reduced accordingly.

SCHEDULE II OF NPA ORDER M–100

Types and quantities of controlled materials which may be obtained under the self-authorization procedure for use in 1- through 4-family residential structures, the construction, alteration, addition, or extension of which was commenced prior to Mar. 6, 1952.

NOTE: This table is not applicable to construction commenced after Mar. 5, 1952.

Type of construction, alteration, addition, or extension	Carbon steel (excluding structural shapes)	Structural shapes, alloy and stainless steel	Copper and copper-base alloys	Aluminum
Construction of residential structures using steel pipe water distribution system, per dwelling unit.	Not more than 2,300 pounds per dwelling unit.	None	Not more than 50 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Construction of residential structures using copper pipe water distribution system, per dwelling unit.	Not more than 1,950 pounds per dwelling unit.	None	Not more than 200 pounds per dwelling unit.	Not more than 250 pounds per dwelling unit.
Alteration, addition, or extension of existing residential structures, per dwelling unit.	Not more than 50 percent of the amounts of controlled materials allowed above for the appropriate type of construction, per dwelling unit.			
Alteration by initial installation of electrical wiring.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 35 pounds of copper per dwelling unit.			
Alteration by initial installation of plumbing with steel pipe water distribution system.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 250 pounds of steel per dwelling unit.			
Alteration by initial installation of plumbing with copper pipe water distribution system.	In addition to the amounts of controlled materials allowed for alterations generally, not more than 125 pounds of steel and 100 pounds of copper per dwelling unit.			

NOTE: Aluminum may be used for conduction of electricity in place of copper on basis of 1 pound of aluminum for each 2 pounds of copper allowed in this schedule. In such event, the allowable quantity of copper is reduced accordingly.

(Sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154)

This amendment shall take effect July 1, 1952.

Issued June 18, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52-6806; Filed, June 18, 1952; 4:17 p. m.]

[Revised CMP Regulation No. 6, Amendment 1 of June 18, 1952]

CMP REG. 6—CONSTRUCTION

MISCELLANEOUS AMENDMENTS

This amendment under Revised CMP Regulation No. 6 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment, consultation with industry representatives has been rendered impracticable due to the need for immediate action and because the amendment affects many different industries.

This amendment affects paragraph (c) of section 4, paragraph (b) of section 24, and Table II of Revised CMP Regulation No. 6, of March 6, 1952.

1. Paragraph (c) of section 4 is amended to read as follows:

(c) If the construction project was properly commenced prior to March 6, 1952, it may be continued without authorization, if, for completion, the owner will not require delivery after September 30, 1951, of controlled materials, including materials for the manufacture of Class A products, in excess of the quantities specified in Table II of this regulation for the appropriate category of construction. If delivery of more than these quantities is required, construction cannot be continued unless an authorized construction schedule and related allotment is made for the project.

2. Paragraph (b) of section 24 is amended to read as follows:

(b) (1) Any aluminum controlled material in construction and maintenance of all rural and urban highways, etc., under the jurisdiction of the Bureau of Public Roads (see Table IV of this regulation), and construction of any building, structure, or project of a type specified in Table I of this regulation (recreational, entertainment, and amusement construction).

(2) In addition to the amount of aluminum allotted for the particular construction project, pursuant to section 8 or Article IV of this regulation, the owner may substitute aluminum for copper, to be used only as a conductor of electric current, but if he does, he must reduce his copper requirements, using the ratio, 1 pound of aluminum to 2 pounds of copper. The right to substitute aluminum for copper as provided in this subparagraph (2), shall apply to all construction covered by this regulation including, but not limited to, construction and maintenance of all rural and urban highways, etc., under the jurisdiction of the Bureau of Public Roads (see Table IV of this regulation), and construction of buildings, structures, or projects of a type specified in Table I of this regulation (recreational, entertainment, and amusement construction).

3. Table II is amended to read:

TABLE II—CATEGORIES OF CONSTRUCTION AND QUANTITIES OF CONTROLLED MATERIALS FOR WHICH PURCHASE ORDERS MAY BE SELF-AUTHORIZED

1. *Construction of industrial plants, factories, or facilities:*

NOTE: These quantities are per project, per quarter.

25 tons of carbon steel and alloy steel, including all types of structural shapes (not to include more than 2½ tons of alloy steel and no stainless steel).
2,000 pounds of copper and copper-base alloys.*
2,000 pounds of aluminum.*

2. *Construction and maintenance of all rural and urban highways, etc., under the jurisdiction of the Bureau of Public Roads (see Table IV of this regulation):*

NOTE: These quantities are per project, and not per quarter.

25 tons of carbon steel (not to include more than 2 tons of all types of structural shapes).
200 pounds of copper and copper-base alloys.*
/ No aluminum,* stainless steel, or alloy steel.

3. *Categories of construction specified in Table I of this regulation (recreational, entertainment, and amusement construction), and housing on military reservations and all military housing under P. L. 211, 81st Congress (Wherry Act) and federally owned housing on federally owned property under the control of the Atomic Energy Commission:*

No self-authorization is permitted.

4. *All other construction (see section 28 of this regulation for exemptions from this regulation):*

NOTE: These quantities are per project, per quarter.

5 tons of carbon steel (not to include more than 2 tons of structural shapes but no wide-flange beam sections or columns).
750 pounds of copper and copper-base alloys.*
1,000 pounds of aluminum.*
No alloy steel, or stainless steel.

* The owner may substitute aluminum for copper, to be used only as a conductor of electric current, and he may self-authorize for such aluminum, but if he does, he must reduce his copper requirements, using the ratio, 1 pound of aluminum to 2 pounds of copper.

(Sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154)

This amendment shall take effect July 1, 1952.

Issued June 18, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52-6805; Filed, June 18, 1952; 4:17 p. m.]

[NPA Order M-2, Interpretation 2 of June 19, 1952]

M-2—RUBBER

INT. 2—USE OF SOLE CREPE CUTTINGS

1. This is an interpretation of sections 3 (k) and 7 of NPA Order M-2.

2. Section 3 (k) defines sole crepe as dry natural rubber produced from pale crepe which has not been compounded, vulcanized, or physically attached to any manufactured product.

3. Section 7, among other things, prohibits the use of sole crepe in the manufacture of pneumatic tires, shoes, shoe soles, heels, welting, or wrappers.

4. Cuttings of sole crepe which result from the process of trimming slabs or sheets of sole crepe to size or shape are nevertheless sole crepe.

5. The use of sole crepe cuttings in the manufacture of pneumatic tires, shoes, shoe soles, heels, welting, or wrappers is therefore prohibited by the provisions of section 7 of NPA Order M-2, as amended.

(Sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154)

Issued June 19, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52-6846; Filed, June 19, 1952; 11:41 a. m.]

[NPA Order M-71 as Amended June 19, 1952]

M-71—PRIORITIES ASSISTANCE TO TECHNICAL AND SCIENTIFIC LABORATORIES

This order as amended is found necessary and appropriate to promote the national defense and is issued under the authority of the Defense Production Act of 1950, as amended. In the formulation of this order as amended, consultation with industry representatives, including trade association representatives, has been rendered impracticable because the order as amended affects a large number of different kinds of laboratories performing different functions and engaged in a wide variety of projects.

This amendment affects NPA Order M-71, as amended August 23, 1951, as follows:

1. It distinguishes between laboratories when engaged in direct defense work on specific contracts with the several Federal agencies, and all other laboratories.

2. It provides for the extension of preferential priority assistance for such defense contract laboratories by the use of the B-5 suffix.

3. It removes the dollar limit of self-certification for procurement of products and materials other than controlled materials for defense contract laboratories.

4. It raises the quantity limits for controlled materials procurement by self-certification for all laboratories.

5. It raises the dollar limits of self-certification for procurement of products and materials other than controlled materials for laboratories other than defense contract laboratories. To accomplish these purposes, NPA Order M-71 is revised to read as follows:

REGULATORY PROVISIONS

Sec.
1. What this order does.
2. Definitions.
3. Self-certification limitations.

Sec.
4. Procurement of small quantities of controlled materials by a defense contract laboratory.
5. Procurement of products and materials other than controlled materials by a defense contract laboratory.
6. Procurement of small quantities of controlled materials by a laboratory other than a defense contract laboratory.
7. Procurement of products and materials other than controlled materials by a laboratory other than a defense contract laboratory.
8. Applications for priorities assistance.
9. Class A products.
10. Restrictions on priorities assistance.
11. Relation to other orders and regulations.
12. Request for adjustment or exception.
13. Records and reports.
14. Communications.
15. Violations.

AUTHORITY: Sections 1 to 15 issued under sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61; 3 CFR, 1951 Supp.; secs. 402, 405, E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR, 1951 Supp.

SECTION 1. *What this order does.* This order provides a procedure for priorities assistance for technical and scientific laboratories in the procurement of needed supplies and materials.

SEC. 2. *Definitions.* For the purposes of this order:

(a) "Person" means any individual, partnership, corporation, association, or other organized group, and includes any business enterprise, Government agency, or institution. If in 1950, or in his last fiscal year ending prior to March 1, 1951, a person operated more than one laboratory, as defined in paragraph (b) of this section, and maintained for any such laboratory separate records showing expenditures therefor for material, as defined in paragraph (d) of this section, he may elect to treat any one or more of such laboratories as a separate person for the purpose of this order, or to treat his entire laboratory operation within the United States, its territories and possessions, as a person for the purpose of this order. Such election may not be changed without prior written approval of NPA.

(b) "Laboratory" means any person located in the United States, its territories or possessions, who carriers on scientific or technological investigation, testing, or development or experimentation as his regular business or in the course of his business, and who buys any materials especially for that purpose, even though he does not have a separate department or organization in his company or institution for these activities. The term "laboratory" includes, without limitation, research laboratories, production control laboratories, testing laboratories, analytical laboratories, clinical laboratories, and instructional laboratories. With the exception of production control laboratories which are engaged in testing operations for the purpose of controlling the quality of a product, it does not include any person to the extent that he buys materials for the manufacture of products for commercial sale or public distribution even though the place in which the products are manufactured may be called a laboratory.

(c) "Defense contract laboratory" means a laboratory when and to the extent engaged in the performance of a definite project or projects covered by a contract or contracts awarded by or on behalf of the Department of Defense or the Atomic Energy Commission, bearing the DO rating with the program identification A, B, C, or E, followed by a digit.

(d) "Material" means any commodity, equipment, accessory, part, assembly, or product of any kind. The term includes, but is not limited to, supplies for laboratories, equipment and instruments designed for use in laboratories, and other materials needed to carry on scientific or technological investigation, testing, or development or experimentation. The term also includes such items as hand tools and safety equipment purchased by a laboratory for sale to its employees for use only in the laboratory activities.

(e) "Delivery order" means any purchase order, contract, or shipping or any other instruction, calling for delivery of any material or product on a particular date or dates or within specified periods of time.

(f) "Controlled materials" means steel, copper, and aluminum, in the forms and shapes indicated in Schedule I of CMP Regulation No. 1.

(g) "Small quantities of controlled materials" means not in excess of the amounts for each material for any one calendar quarter as specified in the list below:

Carbon steel (including wrought iron).	30 tons.
Alloy steel (except stainless steel).	8 tons.
Stainless steel (nickel-bearing).	300 pounds.
Copper and copper-base alloy brass mill products, copper wire mill products, copper and copper-base alloy foundry products and powder.	3,000 pounds.
Aluminum	2,000 pounds

(h) "NPA" means the National Production Authority.

SEC. 3. *Self-certification limitations.* No laboratory, or defense contract laboratory, may obtain by self-certification during any one calendar quarter more than its actual minimum requirements but not in excess of the small quantities of controlled materials set forth in section 2 (g) of this order.

SEC. 4. *Procurement of small quantities of controlled materials by a defense contract laboratory.* A defense contract laboratory engaged in a project or projects covered by a contract or contracts which bear program identification consisting of A, B, C, or E, followed by a digit, may obtain for any one calendar quarter not in excess of the small quantities of controlled materials (as defined in section 2 (g) of this order), needed for carrying out such projects, by using on its delivery orders the allotment symbol X–1, and appending as a suffix the program identification B–5, to read X–1–B–5, and a certification which shall read as follows:

Certified under NPA Order M–71.

This certification shall be signed as provided in section 8 of NPA Reg. 2, and shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place a delivery order under the provisions of this order to obtain the products and materials covered by the delivery order. Such orders are authorized controlled material orders for the purpose of all CMP regulations, as provided by section 2 (q) of CMP Regulation No. 1.

SEC. 5. *Procurement of products and materials other than controlled materials by a defense contract laboratory.* A defense contract laboratory may use on its delivery orders the rating DO–X1 in obtaining, without dollar limitation, products and materials other than controlled materials to the extent required to perform its contracts, awarded by or on behalf of the Department of Defense or the Atomic Energy Commission, bearing the DO rating with the program identification A, B, C, or E, by appending as a suffix the program identification B–5, to read DO–X1–B–5, and a certification which shall read as follows:

Certified under NPA Order M–71.

This certification shall be signed as provided in section 8 of NPA Reg. 2, and shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place an order under the provisions of this order to obtain the products or materials covered by the delivery order.

SEC. 6. *Procurement of small quantities of controlled materials by a laboratory other than a defense contract laboratory.* A laboratory other than a defense contract laboratory may obtain (by self-certification) not in excess of small quantities of controlled materials (as defined in section 2 (g) of this order) which are needed for carrying on scientific or technological investigations, testing, or development or experimentation, by using on its delivery orders the allotment symbol X–1, and a certification which shall read as follows:

Certified under NPA Order M–71.

This certification shall be signed as provided in section 8 of NPA Reg. 2, and shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place a delivery order under the provisions of this order to obtain the products or materials covered by the delivery order. Such orders are authorized controlled material orders for the purpose of all CMP regulations, as provided by section 2(q) of CMP Regulation No. 1. Laboratories other than defense contract laboratories shall not use the suffix B–5.

SEC. 7. *Procurement of products and materials other than controlled materials by a laboratory other than a defense contract laboratory.* A laboratory other than a defense contract laboratory may obtain products and materials other than controlled materials, which are needed for carrying on scientific or technological investigations, testing, or development or experimentation by using

the rating DO–X–1 on its delivery orders therefor, up to the following amounts: For the quarter ending June 30, 1952, a total purchase price not exceeding $3,000, and for each calendar quarter thereafter a total purchase price not exceeding $10,000. A certification shall appear on all such orders to read as follows:

Certified under NPA Order M–71.

This certification shall be signed as provided in section 8 of NPA Reg. 2, and shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place an order under the provisions of this order to obtain the products or materials covered by the delivery order.

SEC. 8. *Applications for priorities assistance.* (a) A laboratory, or a defense contract laboratory, which estimates that its requirements of controlled materials (including the requirements thereof of its suppliers of Class A products, as provided in section 9 of this order) for any one calendar quarter will exceed the small quantities of controlled materials as defined in section 2 (g) of this order, may apply to the National Production Authority, Washington 25, D. C., on Form NPAF–109, in triplicate, for an allotment of such materials. NPA may allot controlled materials to such a laboratory by returning a copy of Form NPAF–109 to the laboratory showing the quantities of controlled materials thereby allotted.

(b) A laboratory other than a defense contract laboratory which estimates that its requirements of products and materials other than controlled materials for any one calendar quarter will exceed the quantity allowed by section 7 of this order, may apply to the National Production Authority, Washington 25, D. C., on Form NPAF–109, in triplicate, for a quota of such products and materials. NPA may assign a quota of products and materials other than controlled materials to such laboratory by returning a copy of Form NPAF–109 to the laboratory with the allowable quota inserted in the appropriate space on the form.

(c) Where a laboratory, or a defense contract laboratory, is allotted controlled materials, or is assigned a quota by NPA as provided by paragraphs (a) and (b) of this section, such laboratory is hereby authorized to place on its delivery orders the same allotment symbol and certification in the case of controlled materials as provided by section 6 or 4 of this order and to apply the same rating and certification in the case of products and materials other than controlled materials as provided by section 7 or 5 of this order: *Provided, however,* That in no case may such laboratory exceed its authorized quota for any one calendar quarter without express permission in writing from NPA.

(d) Forms NPAF–109, applications for priorities assistance, are available at all field offices of the Department of Commerce and may be filed for succeeding calendar quarters at any time after the effective date of this order.

(e) Quotas under this section will be assigned only to laboratories which are engaged in scientific or technological investigation, testing, or development or experimentation, and then only in cases where NPA determines that the project or projects for which quotas are desired are to be used in the interest of national defense, enhancing national resources, or promoting public health and safety.

(f) Where controlled materials or products (excluding Class A products) or materials other than controlled materials are obtained without priority assistance, the quantities or dollar amounts so obtained shall not apply against the assigned quotas.

SEC. 9. *Class A products.* (a) In order to obtain Class A products (as defined in section 2 (j) of CMP Regulation No. 1) needed for carrying on scientific or technological investigation, testing, or development or experimentation, a laboratory, or a defense contract laboratory, must ascertain from its supplier the quantity of controlled materials required in the manufacture of the said Class A products. In the event that the quantity of controlled materials required for the manufacture of the said Class A products and the laboratory's own requirements for controlled materials as such, does not exceed the small quantity of controlled materials, as defined in section 2 (g) of this order, the laboratory may make an allotment thereof to its supplier of Class A products in the same manner as prescribed in section 12 of CMP Regulation No. 1 on Form CMP–5 as set forth in Schedule II of CMP Regulation No. 1, which shall be attached to the delivery order.

(b) In cases where an order for Class A products for any one calendar quarter will cause a laboratory, or a defense contract laboratory, to exceed the small quantity limitations prescribed in sections 2 (g) and 6 or sections 2 (g) and 4 of this order, a laboratory, or a defense contract laboratory, may obtain such products by applying for a quota under section 8 of this order and including in the application Form NPAF–109 the controlled materials requirements of its Class A product suppliers. After a quota is assigned, the laboratory may make an allotment within the limits thereof to its supplier of Class A products in the same manner as prescribed in paragraph (a) of this section.

(c) In every case covered by paragraph (a) or (b) of this section, a laboratory shall use on its delivery orders the allotment symbol X–1, and the certification provided in section 6 of this order; a defense contract laboratory shall use on its delivery orders, the allotment symbol X–1 and append as a suffix the program identification B–5, to read X–1–B–5, and the certification provided in section 4 of this order.

SEC. 10. *Restrictions on priorities assistance.* (a) No person may use any of the materials or products obtained under the provisions of this order for purposes other than as required for scientific or technological investigation, testing, or development or experimentation.

(b) No person may make trial production runs of experimental models which are made with materials or products obtained under this order, unless specifically authorized by NPA on Form NPAF–109.

(c) No person may use any of the materials or products obtained under the provisions of this order for the manufacture of experimental models which are to be distributed for the purpose of promoting sales or creating a consumer demand for the article. However, the provisions of this order may be used to get materials or products for the production of experimental models which are intended to be used only for scientific or technological investigation, testing, or development or experimentation. Such experimental models may be made only in the minimum number and the minimum size required to determine the suitability of the article for commercial production and use.

SEC. 11. *Relation to other orders and regulations.* (a) This order supplements NPA Reg. 2, which sets forth the basic rules of the priorities system, and provisions of that regulation govern the use of the DO rating herein assigned, except to the extent that the provisions of this order are inconsistent with that regulation.

(b) The provisions of this order do not authorize the use of any materials where such use is prohibited by any other applicable NPA orders or regulations, but any laboratory, or any defense contract laboratory, which uses the DO rating, symbol, or the program identification herein assigned may use any materials or parts so obtained regardless of the limitations on the rate of use stated in any applicable NPA order, except insofar as such order may limit the specifications of a product as to material content. No provision of this order, however, shall supersede any requirement of any other applicable NPA order that any material or part may be obtained only by allocation; nor shall any provision of this order supersede any such provision of CMP regulations, except to the extent that the provisions of this order are inconsistent with such CMP regulations.

(c) Notwithstanding section 13 (a) of CMP Regulation No. 5, a laboratory, or a defense contract laboratory, may either (1) avail itself of the provisions of CMP Regulation No. 5, to procure material required for the maintenance, repair, and operation of the premises, or, (2) procure such materials under the provisions of this order.

(d) No laboratory shall use the DO–X1 rating or the allotment symbol X–1, to obtain any materal listed under Schedule I to CMP Regulation No. 5. This restriction, however, shall not apply to defense contract laboratories using the rating DO–X1–B–5, when specifically authorized by this order. No laboratory or defense contract laboratory may use the rating DO–X1, or the alloment symbol X–1, with or without the suffix B–5, to obtain materials listed under Schedule II to CMP Regulation No. 5 or under List A of NPA Reg. 2.

(e) No person may use any of the materials or products obtained under this order for construction as defined in Revised CMP Regulation No. 6.

SEC. 12. *Request for adjustment or exception.* Any person affected by any

provision of this order may file a request for adjustment or exception upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. In examining requests for adjustment or exception claiming that the public interest is prejudiced by the application of any provision of this order, consideration will be given to the requirements of the public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing, by letter in triplicate, and shall set forth all pertinent facts, the nature of the relief sought, and the justification therefor.

SEC. 13. *Records and reports.* (a) Each person participating in any transaction covered by this order shall make and preserve, for at least 3 years thereafter, accurate and complete records of receipts, deliveries, inventories, production and use, in sufficient detail to permit the determination, after audit, whether each transaction complies with the provisions of this order. This order does not specify any particular accounting method and does not require alteration of the system of records customarily used, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals by those persons who, at the time such microfilm or other photographic records are made, maintain such copies of records in the regular and usual course of business.

(b) All records required by this order shall be made available for inspection and audit by duly authorized representatives of the National Production Authority, at the usual place of business where maintained.

(c) Persons subject to this order shall make such records and submit such reports to the National Production Authority as it shall require, subject to the terms of the Federal Reports Act of 1942 (5 U. S. C. 139–139F).

SEC. 14. *Communications.* All communications concerning this order shall be addressed to the National Production Authority, Washington 25, D. C., Ref: NPA Order M–71.

SEC. 15. *Violations.* Any person who wilfully violates any provision of this order, or any other order or regulation of NPA, or who wilfully furnishes false information or conceals any material fact in the course of operation under this order, is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This order as amended shall take effect June 19, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52-6848; Filed, June 19, 1952; 11:41 a. m.]

[NPA Order M–16, as Amended June 19, 1952]

M–16—DISTRIBUTION OF COPPER RAW MATERIALS

This order as amended is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950 as amended. In the formulation of this amended order, there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations. However, consultation with representatives of all trades and industries has been rendered impracticable because the order affects a large number of different trades and industries.

NPA Order M–16, as last amended December 17, 1951, is hereby further amended to require refiners purchasing copper raw materials for purposes other than production or sale of refined copper to apply to NPA for authorization; to add blister copper to the list of copper raw materials; to require reports from scrap dealers and brokers; and to effect minor editorial changes.

As amended, NPA Order M–16 reads as follows:

REGULATORY PROVISIONS

Sec.
1. What this order does.
2. Definitions.
3. Acceptance of delivery of copper raw materials.
4. Restrictions on disposal of scrap.
5. Restrictions on inventory accumulations.
6. Restrictions on toll agreements.
7. Authorizations and directives.
8. Applications for adjustment or exception.
9. Records and reports.
10. Communications.
11. Violations.

AUTHORITY: Sections 1 to 11 issued under sec. 704, 64 Stat. 816, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, Pub. Law 96, 82d Cong.; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61; 3 CFR, 1951 Supp.; secs. 402, 405, E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR, 1951 Supp.

SECTION 1. *What this order does.* The purpose of this order is to regulate the acceptance, delivery, and distribution of all copper raw materials (whether on toll agreements or otherwise) so as to provide an equitable distribution of such materials. It sets forth the classes of persons who may receive such materials without specific authorization from the National Production Authority and the types of copper raw materials such persons may so receive, and provides for application by all other persons to the National Production Authority for specific written authorization. It also limits toll agreements covering scrap and prohibits undue accumulation of scrap.

SEC. 2. *Definitions.* As used in this order:

(a) "Person" means any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States or any other government.

(b) "Copper" means unalloyed copper, including electrolytic copper, fire-refined copper, and all unalloyed copper in any form.

(c) "Copper-base alloy" means any alloy in the composition of which the percentage of copper metal equals or exceeds 40 percent by weight of the metallic content of the alloy. It includes fired and demilitarized cartridge and artillery cases, and all copper-base alloy in any form. It does not include alloyed gold produced in accordance with U. S. Commercial Standard CS 67–38.

(d) "Scrap" means all copper or copper-base alloy materials or objects which are the waste or byproduct of industrial fabrication, or which have been discarded on account of obsolescence, failure, or other reason.

(e) "Copper wire mill product" means uninsulated or insulated wire and cable, whatever the outer protective coverings may be, made from copper or copper-base alloy, and also copper-clad steel wire containing over 20 percent copper by weight, regardless of end use. All copper wire mill products should be measured in terms of pounds of copper content.

(f) "Brass mill products" means copper and copper-base alloys in the following forms: sheet, plate, and strip, in flat lengths or coils; rod, bar, shapes, and wire (except copper wire mill products); anodes, rolled, forged, or sheared from cathodes; and seamless tube and pipe. Straightening, threading, chamfering, and cutting to width and length, and reduction in gage, do not constitute changes in form of brass mill products except as determined by NPA. The following related products which have been produced by a change in form of brass mill products are not included in the definition of brass mill products:

Circles.
Discs (except brass military ammunition discs after June 30, 1952).
Cups (except brass military ammunition cups after June 30, 1952).
Blanks and segments.
Forgings (except anodes).
Welding rod, 3 feet or less in length.
Rotating bands.
Tube and nipples—welded, brazed, or mechanically seamed.
Formed flashings.
Engravers' copper.

(g) "Foundry product" means cast copper or copper-base alloy shapes and forms suitable for ultimate use without remelting, rolling, drawing, extruding, or forging. (The process of casting includes the removal of gates, risers, and sprues, and sandblasting, tumbling, or dipping, but does not include any further machining or processing. For centrifugal castings the process includes the removal of the rough cut in the inner or outer diameter, or both, before delivery to a customer. Castings include anodes

cast in a foundry or by an ingot maker).

(h) "Powder mill products" means copper or copper-base alloy in the form of granular or flake powder.

(i) "Copper raw materials" as used in this order includes the following materials as defined below:

(1) "Refined copper"—Copper metal which has been refined by any process of electrolysis or fire-refining to a grade and in a form suitable for fabrication, such as cathodes, wire bars, ingot bars, ingots, cakes, billets, or other refined shapes. This does not include copper-base alloy ingot, brass mill castings, intermediate shapes, anodes, powder mill products, copper wire mill products, brass mill products, or foundry copper or copper-base alloy products.

(2) "Domestic refined copper"—Copper metal which has been refined by any process of electrolysis or fire-refining to a grade and in a form suitable for fabrication from ores, concentrates, scrap, or other copper-bearing material which has been mined, processed, generated, or recovered within the United States or its possessions.

(3) "Blister copper"—High-grade crude copper in any form produced from convertor operations and from which nearly all the oxidizable impurities have been removed by slagging and volatilization.

(4) "Brass mill scrap"—Uncontaminated scrap which is the waste or by-product of the production or industry fabrication of brass mill products or copper wire mill products. It includes uncontaminated fired and demilitarized cartridge and artillery cases.

(5) "Other copper-base alloy scrap"—Alloyed copper scrap other than brass mill scrap. It includes contaminated fired and demilitarized cartridge and artillery cases.

(6) "Other unalloyed copper scrap"—Unalloyed copper scrap other than brass mill scrap.

(7) "Fired and demilitarized cartridge and artillery cases"—Fired and demilitarized cartridge and artillery cases which have been manufactured from brass mill products and are not contaminated.

(8) "Brass mill casting"—A copper-base alloy casting, from which brass mill or intermediate shapes may be rolled, drawn, or extruded, without remelting.

(9) "Copper-base alloy ingot"—A copper-base alloy used in remelting, alloying, or deoxidizing operations.

(10) "Copper or copper-base alloy shot and waffle"—Shot or waffle produced from copper or copper-base alloy, and to be used in remelting, alloying, deoxidizing, or chemical operations.

(11) "Intermediate shape"—Any product which has been rolled, drawn, or extruded, from refined copper or brass mill castings, and which will be rerolled, redrawn, insulated, or further processed into finished brass mill or copper wire mill products by other producers of copper or copper-base alloy controlled materials.

(12) "Copper precipitates (or cement copper)"—Copper metal precipitated from mine water by contact with iron scrap, tin cans, or iron in other forms.

SEC. 3. *Acceptance of delivery of copper raw materials.* (a) Commencing August 1, 1951, no person may accept delivery of any copper raw materials, including those which are processed on a toll basis in accordance with section 6 of this order, except railroad engine castings and car journal bearings pursuant to section 6 (b) of this order or except as specifically authorized in writing by the National Production Authority: *Provided, however,* That a person listed in column (A) of the table set forth at the end of this paragraph may accept delivery of the copper raw materials specified in the corresponding section of column (B) of the table without such written authorization. In those sections of column (B) where no copper raw material is specified but a form is indicated, persons desiring copper raw materials shall apply on such form for written authorization not later than the tenth day of the month preceding the month in which delivery is sought. Notwithstanding the provisions of this paragraph, foundries using less than 10,000 pounds of copper raw materials per month shall apply on Form NPAF–83 on or before January 10, 1952, for an allocation for the second and third calendar quarters of 1952, and on or before July 10, 1952, for an allocation for the fourth quarter of 1952 and the first quarter of 1953. Foundries using 10,000 pounds or more, but less than 100,000 pounds, of copper raw materials per month shall apply for quarterly allocations on Form NPAF–83 by the tenth day of the month preceding the first, second, third, and fourth calendar quarters of 1952. Foundries using 100,000 pounds or more of copper raw materials per month shall apply on Form NPAF–83 by the tenth day of the month preceding that in which delivery is sought. Such application must furnish all information required by the form.

(A)	(B)
(1) Refiner—Any person who produces refined copper. This includes any person who converts copper-clad or copper-base, or copper-base alloy-clad steel scrap into refined copper.	(1) Blister copper, other unalloyed copper scrap, and other copper-base alloy scrap for use in the production of refined copper, and refined copper for resale without change in form (for other purposes apply on Form NPAF–83).
(2) Scrap dealer and broker—Any person regularly engaged in the business of buying and selling scrap, but who does not melt such scrap.	(2) Other unalloyed copper scrap[1]; other copper-base alloy scrap[1]; brass mill scrap[1]; contaminated fired and demilitarized cartridge and artillery cases.[1]
(3) Jobber dealer—Any person who receives physical delivery of refined copper, copper-base alloy ingot, or copper or copper-base alloy shot, and sells or holds the same for sale without change in form.	(3) None (apply on Form NPAF–83).
(4) Exported—Any person who exports copper raw materials.	(4) None (apply on Form NPAF–83 and give export license number).
(5) Brass mill—Any person who produces brass mill products, brass mill castings, or intermediate shapes.	(5) None (apply on Form NPAF–83).
(6) Copper wire mill—Any person who produces copper wire mill products or intermediate shapes.	(6) None (apply on Form NPAF–83).
(7) Brass and bronze foundry—Any person who produces foundry copper or copper-base alloy products.	(7) None[2] (apply on Form NPAF–83).
(8) Ingot maker—Any person who produces copper-base alloy ingot for delivery as such.	(8) None[2] (apply on Form NPAF–83).
(9) Miscellaneous producer—Any person, not falling in one of the classes described above, who requires copper raw materials in his regular production operation. Examples: Chemical plants, iron foundries, aluminum foundries, electrotypers, producers of copper and copper-base alloy powder.	(9) None (apply on Form NPAF–83).
(10) Scrap generator—Any person, other than a scrap dealer, who in his normal operations generates or accumulates scrap or copper-clad or copper-base alloy-clad steel scrap, but who is not in the business of producing copper raw materials, copper wire mill products, brass mill products, powder mill products, or foundry copper or copper-base alloy products.	(10) None.
(11) All other persons	(11) None.

[1] See also section 5 (b) of this order.

[2] Foundries and ingot makers may exchange among themselves, and with each other, copper-base alloy ingot on an equivalent copper content basis without charging such deliveries against their authorizations.

(b) An authorization to accept delivery of refined copper may specify domestic refined copper or other refined copper. No person who has been authorized to accept delivery of other refined copper may accept delivery of domestic refined copper pursuant to such authorization.

(c) Any person who receives written authorization to accept delivery of copper raw materials shall furnish to his supplier a signed certification in substantially the following form:

> The undersigned certifies, subject to statutory penalties, that acceptance of delivery of the copper raw materials herein ordered is permitted pursuant to NPA Authorization No. _____.

This certification constitutes a representation by the purchaser to the seller, and to the National Production Authority, that delivery of the copper raw materials may be accepted by the purchaser pursuant to the indicated written authorization.

(d) Notwithstanding the provisions of paragraph (a) of this section, a person may, during the calendar quarter commencing July 1, 1951, and each calendar quarter thereafter, receive copper raw materials without specific authorization of the National Production Authority, provided:

(1) That his total receipts of all copper raw materials from all sources during that calendar quarter do not exceed 300 pounds copper content, and

(2) That he furnishes to the person who supplies the material a signed certification in substantially the following form:

> The undersigned hereby certifies, subject to statutory penalties, that receipt of the copper raw materials herein ordered in the calendar quarter requested will not bring his total receipts during that quarter above 300 pounds copper content.

This certification constitutes a representation by the purchaser to the seller, and to the National Production Authority, that delivery of such copper raw materials may be accepted by the purchaser pursuant to this order.

(e) Except with the written permission of the National Production Authority (1) no refiner, scrap dealer, jobber dealer, ingot maker, or other person dealing in copper raw materials, may deliver any copper raw materials to a refiner, scrap dealer, or broker, except the type of copper raw materials that such refiners, scrap dealers, or brokers are permitted to receive without authorization pursuant to paragraph (a) of this section, and (2) no person shall deliver copper raw materials to any person other than a refiner, scrap dealer, or broker without first having received from such person the certification set forth in paragraph (b) or paragraph (c) of this section.

(f) The provisions of this section apply not only to acceptance of delivery by a person from other persons, including affiliates and subsidiaries, but also to acceptance of delivery by a branch, division, or section of a single enterprise which produces copper raw materials or copper controlled materials from a branch, division, or section of the same or any other enterprise under common ownership or control which does not produce copper controlled materials.

SEC. 4. *Restrictions on disposal of scrap.* (a) No person other than establishments of the United States Army, Navy, or Air Force, such as arsenals, navy yards, gun factories, and depots, or a person who is in the business of producing copper raw materials (such as refineries, ingot makers, copper wire mills, brass mills, or foundries), or a person who qualifies as a "Miscellaneous producer" as listed in Column A under section 3 of this order, shall melt or process any scrap or copper-base alloy-clad steel scrap generated in his plant through fabrication, or accumulated in his operations through obsolescence, except as specifically authorized in writing by the National Production Authority, nor shall he dispose of such materials in any way other than by delivery to a person authorized by this order to accept delivery.

(b) No person shall dispose of any material, the delivery of which he accepted as scrap, other than as scrap, except with the specific authorization of the National Production Authority: *Provided, however,* That scrap dealers and brokers may sell in each month as usable material a quantity of material that was acquired as scrap and does not in the aggregate exceed 1,000 pounds (copper content).

(c) Nothing contained in this order shall prohibit any public utility from using "as is," in its own operation, copper wire or cable which has become scrap by obsolescence.

SEC. 5. *Restrictions on inventory accumulations.* (a) Unless specifically authorized by the National Production Authority, no person who generates scrap in his operations through fabrication, manufacture, or obsolescence shall keep on hand more than 30 days' accumulation of scrap or copper-clad or copper-base alloy-clad steel scrap unless such accumulation aggregates less than 2,000 pounds.

(b) No scrap dealer may accept delivery of any kind, grade, or type of scrap if his total inventory of scrap (including inventory not physically located in the dealer's yard or plant) is, or by such receipt would become, in excess of the weight of his total deliveries of scrap during the preceding 60-day period.

(c) The provisions of paragraph (a) of this section shall not apply to the establishments of the United States Army, Navy, or Air Force, such as arsenals, navy yards, gun factories, and depots: *Provided, however,* That such establishments shall report to the National Production Authority by August 10, 1951, with respect to July, and by the tenth day of each month thereafter with respect to the preceding month, the quantity and type of scrap at each such location.

SEC. 6. *Restrictions on toll agreements.* (a) Commencing on December 18, 1950, and unless the person delivering or owning the scrap, or the person for whose benefit the conversion, remelting, or other processing of the scrap will be effected, has received the approval of the National Production Authority, no person shall deliver scrap, and no person shall accept such scrap, for converting, remelting, or other processing into electrolytic or fire-refined copper under any existing or future toll agreement, conversion agreement, or other arrangement by which title to the scrap remains vested in the person delivering or owning the scrap, or pursuant to which unalloyed copper in any quantities, equivalent or otherwise, is to be returned to the person delivering or owning the scrap. The provisions of this paragraph will apply with equal effect to any agency relationship which would result in a toll arrangement as described in this paragraph.

(b) Commencing on July 15, 1951, and unless the person delivering or owning the refined copper or scrap, or the person for whose benefit the conversion, remelting, or other processing of the refined copper or scrap will be effected, has received the written approval of the National Production Authority, no person shall deliver refined copper or scrap, and no person shall accept same, for converting, remelting, or other processing into copper wire mill products, brass mill products, foundry products, copper-base alloy ingot, or other miscellaneous products under any existing or future toll agreement, conversion agreement, or other arrangement by which title to the refined copper or scrap remains vested in the person delivering or owning the refined copper or scrap, or pursuant to which copper wire mill products, brass mill products, foundry products, copper-base alloy ingot, or other miscellaneous products in any quantities, equivalent or otherwise, is to be returned to the person delivering or owning the refined copper or scrap. The provisions of this paragraph will apply with equal effect to any agency relationship which would result in a toll arrangement hereinabove described. Nothing contained in this paragraph shall prohibit railroads from converting or having converted for them, railroad engine castings and car journal bearings for their own use.

(c) Persons requesting such approval shall file with the National Production Authority a letter setting forth the names and addresses of the parties to any existing or proposed toll or conversion agreement; the kind, grade, and form of the refined copper or scrap involved; the tonnage of the refined copper or scrap and the estimated tonnage of the electrolytic or fire-refined copper, copper wire mill products, brass mill products, foundry products, copper-base alloy ingot, or other miscellaneous products resulting; the estimated rate and dates of delivery of such copper or copper products; the length of time such agreement or other similar agreement between the same parties has been in force; the duration of the agreement; the purpose for which such copper or copper products are to be used; and such other information as the applicant may wish to submit.

SEC. 7. *Authorizations and directives.* The National Production Authority may issue authorizations or directives from time to time with respect to the delivery, disposal, and conversion of copper raw materials. Such authorizations and directives shall be complied with by the recipients thereof.

SEC. 8. *Applications for adjustment or exception.* Any person affected by any provision of this order may file a request for adjustment or exception upon the ground that any provision works an undue or exceptional hardship upon him not suffered generally by others in the

same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. In examining requests for adjustment claiming that the public interest is prejudiced by the application of any provision of this order, consideration will be given to the requirements of the public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing, by letter in triplicate, and shall set forth all pertinent facts, the nature of the relief sought, and the justification therefor.

SEC. 9. *Records and reports.* (a) Each person participating in any transaction covered by this order shall make and preserve, for at least 3 years thereafter, accurate and complete records of receipts, deliveries, inventories, production, and use, in sufficient detail to permit the determination, after audit, whether each transaction complies with the provisions of this order. This order does not specify any particular accounting method and does not require alteration of the system of records customarily used, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals by those persons who, at the time such microfilm or other photographic records are made, maintain such copies of records in the regular and usual course of business.

(b) All records required by this order shall be made available at the usual place of business where maintained for inspection and audit by duly authorized representatives of the National Production Authority.

(c) Any person who uses or processes copper or copper-base alloy in his operations and who falls within the general classification set forth in Column A of the table at the end of this paragraph shall complete and return the Bureau of Mines form identified in the corresponding section of Column B of the table to the address specified on the form, in the number of copies specified on the form, on or before the twentieth day of July 1951 with respect to such use or processing during June 1951, and on or before the fifteenth day of each succeeding month with respect to such use or processing during the preceding month except that the form indicated under item 5 in the table at the end of this paragraph shall be filed on or before February 28, 1952, with respect to operations during the year 1951.

(A)	(B)
(1) Brass ingot makers and miscellaneous remelters	6-1115-M.
(2) Brass mills and copper wire mills	6-1115-MS.
(3) Primary smelters	6-1045-M.
(4) Primary refiners	6-1046-M.
(5) Brass mills,[1] copper wire mills,[1] miscellaneous users, and foundries	6-1115-AS.

[1] Except those required to file Form 6-1115-MS.

(d) Commencing December 17, 1951, any person other than a refiner, custom smelter, scrap dealer, or scrap generator, who deals in refined copper or who owns, melts, or otherwise uses in his operations, electrolytic or fire-refined copper, unalloyed copper in any form (including scrap), copper-base raw materials in any form (including ingot and scrap), or intermediate brass or copper wire mill shapes, shall complete and return Form NPAF-63 to the National Production Authority, Washington 25, D. C., Ref: M-16, in the number of copies specified on that form. Such reports shall be filed monthly in accordance with the reporting procedure specified on the form, except in those cases where the form indicates a quarterly report should be filed. The provisions of this paragraph do not apply to any person who owns less than 500 pounds of the forms of copper enumerated in this paragraph, or who melts or otherwise uses less than 500 pounds of such forms of copper per month.

(e) Commencing December 17, 1951, any person who produces copper or copper-base alloy controlled materials (brass mill products, copper wire mill products, foundry products, or powder mill products as defined in section 2 of this order), shall complete and return Form NPAF-84 to the National Production Authority, Washington 25, D. C., Ref: M-16, in the number of copies specified on that form. Such report shall be filed monthly in accordance with the reporting procedure specified on the form, except in those cases where the form indicates that a quarterly report should be filed.

(f) Any scrap dealer or broker whose aggregate end-of-month inventory or aggregate monthly purchases or aggregate monthly sales of scrap averaged 60,000 pounds or more (metal weight) during the first 6 months of 1952, shall, not later than August 10, 1952, complete and return Form NPAF-125 in triplicate with regard to his operations during July 1952. For the month of August 1952 (commencing with the first of that month) and for each month thereafter, any scrap dealer or broker who during that month purchased or sold 60,000 pounds or more of scrap or had an end-of-month inventory of 60,000 pounds or more of scrap shall, not later than the tenth day of the following month, complete and return Form NPAF-125 in triplicate with regard to his operations during such month. All such forms shall be addressed to the Base Metals Branch, Bureau of Mines, Washington 25, D. C.

(g) Persons subject to this order shall make such other records and submit such other reports to the National Production Authority as it shall require, subject to the terms of the Federal Reports Act of 1942 (5 U. S. C., 139-139F).

SEC. 10. *Communications.* All communications concerning this order shall be addressed to the National Production Authority, Washington 25, D. C., Ref: M-16.

SEC. 11. *Violations.* Any person who willfully violates any provision of this order, or any other order or regulation of NPA, or who willfully furnishes false information or conceals any material fact in the course of operation under this order, is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials, or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act.

This order as amended shall take effect June 19, 1952.

NATIONAL PRODUCTION AUTHORITY,
By JOHN B. OLVERSON,
Recording Secretary.

[F. R. Doc. 52-6847; Filed, June 19, 1952; 11:41 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 17—DISBURSEMENTS AND ACCOUNTS

SALE OF MAPS, SOLICITOR'S OPINIONS AND TRANSCRIPTS OF HEARINGS

Section 17.13 *Post-route and rural-delivery maps* is amended to read as follows:

§ 1713 *Sale of maps, Solicitor's opinions and transcripts of hearings*—(a) *Authority.* The Postmaster General may authorize the sale of—

(1) Post route and rural delivery maps;

(2) Opinions of the Solicitor for the Post Office Department; and

(3) Transcripts of hearings before the trial examiners for the Post Office Department;

at such rates as he determines to be fair and reasonable.

Provided, That such shall not be sold at a price that represents more than the cost thereof.

(Sec. 201, 60 Stat. 584, section 201, 61 Stat. 231; 39 U. S. C. 805)

(b) *Handling of funds from sales of post-route and rural-delivery maps.* Application for the purchase of post-route and rural delivery maps and payment therefor shall be made to the Director, Division of Postal Finance, who shall deposit the funds received in his checking account with the Treasurer of the United States and forward the order for maps to the Assistant Postmaster General, Bureau of Facilities. Where remittances are received in excess of the amount required to pay for maps furnished, the Assistant Postmaster General, Bureau of Facilities, shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall make the refund. At the end of each month the Assistant Postmaster General, Bureau of Facilities, shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall draw a check for the amount stated thereon and deposit the same in the Post Office Department Fund with the Treasurer of the United States.

(c) *Handling of funds from sales of transcripts of hearings before the hearing examiners for the Post Office Department.* Funds received by the Chief

Hearing Examiner for the sale of transcripts of hearings before the hearing examiners for the Post Office Department shall be transmitted by the Chief Hearing Examiner to the Director, Division of Postal Finance, who shall deposit such funds in his checking account with the Treasurer of the United States. Where remittances are received in excess of the amount required to pay for transcripts of hearings furnished, the Chief Hearing Examiner shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall make the refund. At the end of each month the Chief Hearing Examiner shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall draw a check for the amount stated thereon and deposit the same in the Post Office Department Fund with the Treasurer of the United States.

(d) *Handling of funds from sales of solicitor's opinions.* The Solicitor is authorized to sell volume 9 of the Solicitor's Opinions and such other previous editions as may be available at the price of $6.50 per volume, it having been determined that such price is fair and reasonable, and does not represent more than the cost thereof. Funds received by the Solicitor from the sale of his opinions shall be transmitted to the Director, Division of Postal Finance, who shall deposit the funds received in his checking account with the Treasurer of the United States. Where remittances are received in excess of the amount required to pay for opinions furnished, the Solicitor shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall make the refund. At the end of each month the Solicitor shall transmit a properly prepared schedule of disbursements to the Director, Division of Postal Finance, who shall draw a check for the amount stated thereon and deposit the same in the Post Office Department Fund with the Treasurer of the United States.

(R. S. 161, 396, secs. 42 Stat. 24, 25, sec. 201, 60 Stat. 584, sec. 201, 61 Stat. 231; 5 U. S. C. 22, 369, 39 U. S. C. 805)

[SEAL] V. C. BURKE,
Acting Postmaster General.

[F. R. Doc. 52-6739; Filed, June 19, 1952; 8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circ. No. 1821]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

PART 192—OIL AND GAS LEASES

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

MISCELLANEOUS AMENDMENTS

The following amendments of certain sections of Part 200 are necessary to show in that part a change from the practice of issuing a noncompetitive lease for acquired lands on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form for acquired lands becomes a lease when signed on behalf of the United States. The change will make the handling of noncompetitive leases for acquired lands substantially similar to that for public domain lands and will eliminate some of the steps now necessary in issuing such leases. In addition, certain minor changes are being made in Parts 191 and 192. The amendments of Parts 191 and 192 will become effective 30 days after date of issuance hereof by the Secretary of the Interior and the amendments to Part 200 will become effective 60 days after that date except as provided in § 200.11. The amendments are as follows:

1. Sections 191.3 and 191.6 are amended to read:

§ 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 191.6 *Special stipulations for lands where surface control is under jurisdiction of the Department of Agriculture or for lands in reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands the surface control of which is under the jurisdiction of the Department of Agriculture will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the offeror or applicant may be required to consent to the inclusion of a stipulation on Form 4–467 if the land is potentially irrigable, or Form 4–467 (a) if the land is within the flow limits of a reservoir site, or Form 4–467 (b) if the land is within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

(Sec. 32, 41 Stat. 450, sec. 1, 44. Stat. 301; 30 U. S. C. 189, 271)

2. Sections 192.42 (b), (d), (e) and (l) and § 192.141 (a) (1) and (b) are amended to read:

§ 192.42 *Offer to lease and issuance of lease.* * * *

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30 day period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30 day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

(d) Each offer must be filled in on a typewriter or printed plainly in ink, and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, except as provided in paragraph (g) of this section, even though the offer should be rejected or withdrawn in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (5) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written

agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

* * * * *

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4), (5) and (f).

* * * * *

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 192.42 (e) (3).

* * * * *

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

3. Sections 200.4, 200.5, and 200.8 are amended and a new § 200.11 is added, to read:

§ 200.4 *Other regulations applicable; lease forms, applications, and offers.* Except as otherwise specifically provided in §§ 200.1 to 200.36, inclusive, the regulations prescribed under the mineral leasing laws, and contained in Parts 70, 71, and 191 to 198, inclusive, of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All oil and gas leases, other than those issued under § 200.8, shall be issued on Form 4–1097. Separate applications or offers must be made for public lands and acquired lands.

§ 200.5 *Lease or permit applications, excepting noncompetitive oil and gas offers; supplemental information required; place of filing.* (a) In addition to the information required by the appropriate regulations, referred to in § 200.4, each application for a lease or permit, except noncompetitive oil and gas offers, must contain (1) a separate statement of the applicant's interests, direct and indirect, in leases or permits for similar mineral deposits, or in applications therefor, on federally owned acquired lands in the same State, identifying by serial number the records where such interests may be found, and (2) a complete and accurate description of the lands for which a lease or permit is desired. If the lands are surveyed according to the government's rectangular system, they should be described by legal subdivision, section, township and range, and if not so surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance or described in a manner consistent with the description in the deed to the United States. The application should name the governmental agency having administrative control over the surface use of the land and identify the unit or project, if any, of which the land is a part. If practicable, the name of the person who conveyed the land to the United States, the date of the conveyance, and the place, liber, and page number of its official recordation should be given.

(b) All applications under this section shall be filed with the Bureau of Land Management, Washington 25, D. C.

§ 200.8 *Offer to lease and issuance of lease.* (a) To obtain a noncompetitive oil and gas lease, an offer to accept such a lease must be made on Form 4–1196, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands Lease,"[1] or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page, size 8½ x 14 inches, of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4–1196 and contains all of the provisions thereof as of the date of filing of this offer." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4–1196, or a valid reproduction of the official form, will also constitute the lease, when signed by the appropriate official of the Bureau of Land Management.

(b) Seven copies of Form 4–1196, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office.[2] The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours. If less than seven copies of an offer are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30 days, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30 day period but before the offer has been rejected, the

[1] Filed as part of the original document.

[2] Since there are no land offices in the following States, offers for lands or deposits in Nebraska and Kansas shall be filed in the Land and Survey Office, Cheyenne, Wyoming; those for North and South Dakota, in the Land Office, Billings, Montana; those for Oklahoma and Texas, with the Regional Administrator, Region V, Albuquerque, New Mexico; and those for all other States east of the States named above, shall be filed with the Regional Administrator, Region VI, Bureau of Land Management, Washington 25, D. C.

offeror will have a priority as of the later filing date.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager or other appropriate official of the Bureau of Land Management will so mark one copy. If there is any variation in the land descriptions among the seven copies, the copy marked "original" shall govern as to the lands covered by the lease. Each offer shall give the name of the governmental agency having administrative control over the surface use of the land and identify the unit of the project involved, if any, and shall be accompanied by either a certified copy of the deed as recorded conveying the land to the United States, or a certified copy of so much of that deed as pertains to the land described in the offer; by a certified copy of any instrument of record containing a provision affecting the oil and gas in the land; and by the certificate of the county recorder or other official having custody of the records of deeds, or the certificate of a duly licensed abstractor, either that no such instrument is shown on the records, or identifying by date and names of the parties such instruments as may be shown on the records and certifying that no other such instruments are shown on the records. If such information and evidence do not accompany the offer, it will not be rejected, if not otherwise subject to rejection, until 30 days from the date of filing has elapsed and if during that period such information and evidence are filed, the offeror's priority will date from the date of the filing of the offer. If such information and evidence are not filed within the 30 days, the offer will be rejected and returned and will afford no priority to the offeror. Should the information and evidence be filed after the 30 days but before the offer has been rejected, the offeror will have a priority as of the later filing date.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township and range, and State, if the lands have been surveyed according to the government rectangular system, and if not so surveyed, by a metes and bounds description connected with a corner of the public land survey by course and distance or described in a manner consistent with the description in the deed to the United States. The offer must cover only lands entirely within a six mile square, and must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(1) In addition, an offer for government owned oil and gas deposits in land to which the act of September 6, 1950 (64 Stat. 769; 7 U. S. C., 1033), applies, must include and describe all of the land as it is described in the deed to the present owner to the extent that the government has an interest in such deposits and must not include any other land, even though held by the same owner. Such an offer must be accompanied by a statement from the County Supervisor or other local representative of the Farmers Home Administration or other agency of the Department of Agriculture, having jurisdiction over the land indicating that the land embraced in the offer is subject to the act of September 6, 1950, and is described in accordance with the deed to the present owner. When an offer for deposits in land subject to the act of September 6, 1950, is not accompanied by the above statement, or describes lands contrary to the above limitations, then if such statement or the amended or additional offers necessary to comply with the above requirements are received within 30 days from the filing of the original offer, the offeror's priority will date from the filing of the original offer. If such documents are filed after the expiration of the 30 days but before rejection of the original offer, the offeror's priority will date from the filing of such documents.

(2) If the United States does not own a 100 percent interest in the oil and gas in any particular tract, the offeror must give the percentage of government ownership and also the information required by § 200.7 (d). If the offer is for lands in which the government has only a future interest in the oil and gas, the offeror must file the additional showing required by § 200.7 (b) and execute the supplemental agreement required by § 200.7 (c).

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge even though the offer should be rejected or withdrawn either in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision, or on the computed acreage included within a metes and bounds description.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (5) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(f) If the offeror is a corporation, the offer must be accompanied by:

(1) A certified copy of the articles of incorporation, or appropriate reference by land office serial number of the record of the Bureau in which such a copy already has been filed, with statement as to any subsequent amendments.

(2) A statement showing the percentage of each class of the corporation's stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be, or who the corporation has reason to believe are, aliens or who have addresses outside of the United States, indicating which classes of stock have voting rights.

(3) A list of the names and addresses of aliens or stockholders living outside of the United States, if more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by, or on behalf of such persons, the list to show the amount and class of stock held by each, and to the extent known to the corporation, or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(4) A separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 percent of the stock of the corporation.

(5) A copy either of the minutes of a meeting of the board of directors or of the bylaws indicating that the officer signing the offer to lease has authority to do so, or in lieu of such a copy, a certificate of the secretary or the assistant secretary of the corporation to that effect, over the corporate seal.

(g) An offer will be rejected and returned to the offeror, and it will confer no priority if it does not meet the requirements of the regulations in Parts 191, 192 of this chapter, and this part, and the instructions printed on the lease form, and is not accompanied by the payments and documents required by such regulations and instructions, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section or an offeror has previously filed the information and title evidence required by paragraph (c) of this section, a reference to that file may be made in lieu of the document, information, and title evidence together with a statement as to any changes therein since they were filed. When an offer is rejected under this paragraph, the offeror will be given an opportunity to file a new offer within 30 days from the date of service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The corrected offer will retain the same serial number, but the effective date of priority will be as of the date such new offer is received.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4–1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4–1196 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4–1196 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer and bond form, if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs of devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 200.11 *Pending applications; use of new Form 4–1196.* Applications filed prior to the effective date of the amended regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–1097, except:

(a) An applicant may, without losing his priority, file Form 4–1196 for the land described in his application, pursuant to § 200.8, but without paying the required filing fee, if the filing fee has already been paid.

(b) Where required to do so, an applicant who has an application pending when the regulations in this part become effective must within 30 days from receipt of notice, file pursuant to the regulations Form 4–1196, without another filing fee if such fee has already been paid, covering the same land, and identify by office and serial number his pending application. Such refiling will retain the priority of the original application, if made within the 30-day period. The application of those who fail to refile within the 30 days will be closed without further notice upon the expiration of that period, unless prior to the rejection of the application and after the expiration of the 30 days a refiling is made, in which case the applicant's priority will date from the date of refiling.

(c) From the date of issuance of the amended regulations in this part until their effective date, Form 4–1196, or unofficial copies thereof, which are exact reproductions on one page of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

(Sec. 10, 61 Stat. 915, sec. 6, 64 Stat. 770; 30 U. S. C. Sup. 359, 7 U. S. C. Sup. 1038)

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

R. D. SEARLES,
Acting Secretary of the Interior.

JUNE 16, 1952.

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[Cir. No. 1822]

PART 244—RIGHTS-OF-WAY FOR CANALS, DITCHES, RESERVOIRS, WATER PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TRAMROADS, ROADS AND HIGHWAYS, OIL AND GAS PIPE LINES, ETC.

EMERGENCY ACCESS PERMITS FOR SALVAGE OPERATIONS

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AUTHORITY: §§ 244.70 to 244.92 issued under 28 Stat. 635, 50 Stat. 874; 43 U. S. C. 956.

§ 244.70 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956), authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tram roads to the extent of 50 feet on each side of the center line of the tram road, by any citizen or association of citizens of the United States engaged in the business, among others, of cutting timber. The act of January 21, 1895, is made applicable to the revested Oregon and California railroad and the reconveyed Coos Bay wagon road grant lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874), provides for the conservation and the management of the said revested and reconveyed lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 244.71 *Statement of policy.* (a) Timber lands of the United States administered by the Bureau of Land Management in western Oregon, western Washington and northwestern California and intermingled and adjacent timber lands in other ownerships during the course of the years 1950 and 1951 have been visited by wind storms of unusually high velocity which have caused extensive wind throw of standing timber. In addition, fires of unusual intensity and magnitude during the summer of the year 1951 burned through extensive acreages of standing timber in the area. The timber thus killed by wind and fire is subject to considerable deterioration with resulting loss of a valuable natural resource if not promptly salvaged. Moreover, such extensive areas of dead and damaged timber have already furnished Douglas fir beetles with breeding places sufficiently favorable to convert an endemic infestation to epidemic proportions, which results in further deterioration of damaged timber and provides a serious threat of loss and destruction to green timber presently unaffected by such infestations. All of the timber thus killed by wind, fire or insects creates conditions of high fire hazard. Reduction of such hazard, the elimination of the epidemic insect infestation, and the recovery of the resource values in the dead and damaged timber requires the immediate harvesting of the affected trees. This, in turn, necessitates ready opportunity for access to such affected timber. Therefore, in view of the extraordinary, immediate, emergency situation, short-term emergency access permits will be issued in accordance with the terms of §§ 244.70 to 244.92 to authorize use of lands of the United States administered by the Bureau of Land Management for the purpose of access to such timber salvage operations. Such permits will not authorize the use of such lands for the removal of other timber; long-term access to any timber controlled by an applicant, whether salvage or healthy, may be obtained over lands administered by Bureau pursuant to 43 CFR 115.154 et seq., or 244.39 to 244.40.

(b) An emergency access permit will authorize access to conduct a salvage operation for a term of not more than one year, with additional time allowed for necessary road construction. No extension except as authorized pursuant to § 244.78, and no renewal of any such permit will be granted nor will more than one such permit be issued respecting any specific salvage operation.

§ 244.72 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 244.70 to 244.92:

(a) "Bureau" means Bureau of Land Management.

(b) "Regional Administrator" means the Regional Administrator, Region I (in the case of Oregon and Washington), or Region II (in the case of California), Bureau of Land Management, or his authorized representative.

(c) "District Forester" means a district forester of the Bureau who is stationed in western Oregon, western Washington or northwestern California.

(d) "Tramroads" means tramways and wagon or motor truck roads to be used in connection with logging and the manufacturing of lumber.

(e) "Salvage area" means any timber land in western Oregon, western Washington or northwestern California either (1) within the exterior boundary of an area burned by a forest fire where the resulting fire hazard has not been abated, or (2) containing merchantable windthrown trees, or (3) which contains standing trees killed by or dying from Douglas fir beetle infestation.

(f) "Salvage operation" means the removal of trees that, in the judgment of the Regional Administrator, are in a salvage area and subject to rapid deterioration because they have been killed or injured by some catastrophic natural cause such as wind, fire, disease or insect infestation, and of timber which, in the judgment of the Regional Administrator, is susceptible to insects. A salvage operation may include, in addition, the removal of healthy intermingled and adjacent trees, provided:

(1) Either the total volume of the trees to be removed does not exceed 100,000 board feet, or

(2) Such healthy trees are, in the judgment of the Regional Administrator, physically located so that their removal is required by normal logging practices, or their removal is economically necessary to make a minimum practical logging operation; for a salvage operation in which logs can be yarded with crawler type tractors, the volume of such healthy timber shall not exceed 35 percent of the total volume to be removed, and for a salvage operation in which logs must be yarded with donkey engine the volume of the healthy timber may not exceed 65 percent of the total volume to be removed.

(g) "Timber susceptible to insects" means healthy and drought weakened living trees most immediately adjacent to and not exceeding in number the currently critically infested trees which, in turn, are immediately adjacent to an area covered with trees which are dead or dying as the result of an attack by Douglas fir beetles.

(h) "Critically infested tree" means a tree infested with Douglas fir beetles to such an extent that such infestation may be reasonably expected to cause the death of such tree.

(i) "Emergency access permit" means a permit issued pursuant to §§ 244.70 to 244.92.

(j) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the control of forest insects, pests and disease, and other activities of a similar nature.

(k) "Licensee" means with respect to any road or right-of-way, any person who is authorized to remove forest products derived from a salvage operation conducted on lands of the United States. A licensee is not an agent of the United States.

(l) "Direct control" of a road, right-of-way, or land, by an applicant for an emergency access permit, means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 244.70 to 244.92.

(m) "Indirect control" of a road, right-of-way, or land, by an applicant for an emergency access permit means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining

in transactions between them relating to such road, rights-of-way, or lands.

§ 244.73 *Nature of emergency access permit.* (a) An emergency access permit does not constitute an easement and does not confer any right on the permittee to any material for construction or other purposes. An emergency access permit is merely a non-exclusive license to transport across lands of the United States administered by the Bureau of Land Management and specified in such emergency access permit, forest products derived from a specified salvage operation.

(b) An emergency access permit, when issued, is intended only to afford to the permittee access necessary for an immediate salvage operation in timber which is to be specifically described in such emergency access permit. Such an emergeny access permit is not intended to afford access for the harvesting of timber other than that described in such permit. Its sole function is as an aid to conservation in the immediate removal of timber, of the type described in § 244.72 (f), which constitutes a present menace to healthy timber in the area. Such emergency access permit is not intended, therefore, to accomodate logging activities of a continuing nature. Where there is more than one salvage operation to be conducted on land tributary to the same road or same road system, an emergency access permit may be issued to embrace any one or more of such operations, or a separate emergency access permit may be issued for each such operation. But with respect to any single salvage operation, no more than one emergency access permit will be issued and no renewal or extension thereof will be granted except an extension for road construction purposes, pursuant to § 244.78: *Provided, however,* That if a permittee's access to a salvage operation is suspended by virtue of an award of arbitrators made pursuant to § 244.81, or pursuant to an agreement, approved by the Regional Administrator, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension.

§ 244.74 *Filing of application.* An application for an emergency access permit must be submitted in duplicate on Form 4–1213 and filed in the office of the appropriate district forester. Application forms will be furnished by the Regional Administrator and the district foresters on request. No application will be received for filing subsequent to one year from the date when §§ 244.70 to 244.92 are published in the FEDERAL REGISTER.

§ 244.75 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter.

(b) An application by an unincorporated association must disclose the names of all the members of such association.

(c) An application by a private corporation must include the statement of the president, vice president or secretary of such corporation that the corporation is authorized to transact business within the State involved.

(d) Where the application is for an emergency access permit across lands over any portion of which the applicant proposes to construct a road, the application must be accompanied by two copies of a sketch map showing the approximate route of the proposed road. The Regional Administrator, where he finds it to be in the public interest, may require an applicant to furnish a more accurate map showing the survey of the proposed road and the specifications to which the applicant proposes to construct such road.

(e) Where the application is for the use of an existing road, the applicant must furnish a map adequate to show the location of such road, together with a statement of the nature of any improvement he proposes to make on such road.

(f) Every application must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested route of access will connect, the portion of such road systems which the applicant directly controls within the meaning of § 244.72 (k), the portions thereof which the applicant indirectly controls within the meaning of § 244.72 (l), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has indirect or no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, the date and nature of any change in his control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. The map must bear the certification of the applicant that the facts as to control as set forth in such map are true to the best of the applicant's information and belief.

§ 244.76 *Reciprocal road use agreement; recordation.* (a) Unless the regional administrator finds that use of the road system (including both existing roads and lands over which such roads are practically able to be extended, for authority to traverse any portion of which system the applicant seeks an emergency access permit) will not be convenient or economically necessary for access to and the removal of forest products from salvage operation on lands administered by the Bureau, the regional administrator, as an condition precedent to the issuance of such permit, shall require the applicant:

(1) As to such portions of such road system as are directly controlled by the applicant, to grant to the United States and its licensees rights of use; and

(2) As to such portions of such road system as are indirectly controlled by the applicant, either to obtain rights of use for the United States and its licensees or to make a showing satisfactory to the regional administrator that he has negotiated therefor in good faith and to waive to the United States, its licensees and permittees any exclusive or restrictive rights he might have to such portions of the road system as are indirectly controlled by him.

(b) Rights of use granted to the United States and its licensees under paragraph (a) of this section shall be for a period of time to be fixed pursuant to § 244.78 and for the purposes set forth in § 244.77. Where the United States or its licensees exercises such right of use, the permittee shall be entitled to receive compensation therefor to be fixed in accordance with the standards and procedures set forth in §§ 244.79 or 244.80 and 244.82.

(c) Where the regional administrator finds that no such rights will be needed by the United States for the conduct of salvage operations on its lands tributary to such road system, the regional administrator may issue an emergency access permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States made pursuant to this section unless modified under § 244.79, shall be executed on Form 4–1214, which shall constitute and form a part of any emergency access permit issued upon the application involved. The applicant shall record such grant in the office of land records of the county or counties in which the roads or lands subject to the agreement are located and submit to the regional administrator not later than 30 days after the issuance of the emergency access permit, a true copy of such agreement bearing the certificate of the appropriate county official as to such recordation. Failure either to cause such recordation or to furnish such certificate thereof in accordance with this paragraph shall void such emergency access permit.

§ 244.77 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from salvage operations on lands administered by the Bureau. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by § 244.79 or § 244.81.

§ 244.78 *Duration and location of rights granted or received by the United States.* The rights granted by the United States under §§ 244.70 to 244.92, will be for a stated term of not to exceed one year for the transportation of forest products to be derived from a specified salvage operation plus not to exceed 3 months for such road construction as may be necessary: *Provided, however,*

That upon a permittee's showing, made prior to the expiration of the period, if any, allowed for such construction, that unusual weather conditions have delayed completion of such construction, a district forester may in his discretion extend the period for such construction for not to exceed a total of three additional months: *And provided further*, That if a permittee's access to a salvage operation is suspended by virtue of an award made by arbitrators pursuant to § 244.81 or pursuant to an agreement, approved by the regional administrator, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension. Rights granted to the United States shall be for such term as will enable a licensee to commence during either the calendar year in which the permit is issued or during one of the two next succeeding calendar years a salvage operation on lands administered by the Bureau, and to complete such salvage operation in accordance with the provisions of such authorization; normally such a licensee will be allowed only one year to complete a salvage operation plus not to exceed three months for the construction of any necessary access roads. In any event, a grant made to the United States under § 244.76 shall finally expire not later than four years and six months after the date when such grant is made.

§ 244.79 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the regional administrator will seek to arrive at an agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; a reasonable fee for use by a licensee for access to and the removal of forest products from salvage operations on lands administered by the Bureau; provisions for road maintenance; the use, in addition to the uses set forth in § 244.77, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products derived from salvage operations conducted on lands administered by the Bureau; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the regional administrator may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such agreement, subsequent contracts for salvage operations on lands managed by the Bureau and tapped by such road system, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the agreement.

(b) The provisions of §§ 244.80 and 244.81 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 244.80 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee pursuant §§ 244.70 to 244.92 to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 244.79, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(b) During the pendency of such arbitration proceedings, the licensee shall be entitled to use the road, right-of-way or land involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the regional administrator and the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the regional administrator and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which may accrue by reason of the licensee's use of the road, as the regional administrator may prescribe.

(c) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs any extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 244.77. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(d) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(e) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 244.81 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 244.70 to 244.92 to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct such licensee in such use. If there has been no agreement under § 244.79 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the salvage timber involved; the extent to which each of the

parties may practicably use his resources in the conduct of other salvage operations; the extent to which the timber to be salvaged constitutes a threat to healthy timber; the extent to which Federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 244.82 *Arbitration procedure.* (a) As to arbitration proceedings relating to the terms or conditions of use of roads, rights-of-way or lands in Oregon:

(1) Within ten days after the delivery of a written request for arbitration under § 244.80 or § 244.81, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(2) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 244.80 and 244.81.

(3) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 244.80 and 244.81 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the regional administrator, either personally or by registered mail.

(4) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

(b) Arbitration proceedings involving the terms or conditions of use of roads, rights-of-way or lands in California or Washington shall be in accordance with the respective State law, if any, is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.83 *Payment required for Government timber.* An applicant will be required to pay to the regional administrator, in advance of the issuance of the permit, the full stumpage value as determined by the regional administrator of the estimated volume of all timber to be cut, removed, or destroyed, in the construction or operation of the road on lands administered by the Bureau.

§ 244.84 *Payment to the United States for road use.* Where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a reasonable fee to be determined by the regional administrator: *Provided, however,* That this section shall not apply where payment for such road use to another permittee is required under §§ 244.70 to 244.92.

§ 244.85 *Bond in connection with existing roads.* An applicant for an emergency access permit to use an existing Government road which is under the administrative jurisdiction of the Bureau will be required, for the protection of such existing road, to execute a bond on Form 4–414 (a) in an amount to be determined by the regional administrator but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with §§ 244.70 to 244.92 and the terms and conditions of the permit.

§ 244.86 *Approval of permit.* Upon the applicant's compliance with the appropriate provisions of §§ 244.70 to 244.92 and if it is determined that the approval of the application will be in the public interest, the regional administrator may, in his discretion, issue an appropriate permit, upon Form 4–1213.

§ 244.87 *Terms and conditions of permit.* (a) As to all emergency access permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the regional administrator and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 244.80 to 244.82.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 244.76, to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the regional administrator may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under §§ 244.70 to 244.92, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States, and to a reservation of all fissionable source materials in accordance with the act of August 1, 1946 (60 Stat. 755).

(8) In the exercise of the rights granted by the permit, not to discriminate against any employee or applicant for employment because of race, creed, color or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the regional administrator may otherwise permit or direct, to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to emergency access permits for the use of an existing road: In addition, every permittee to whom an emergency access permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the regional administrator may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 244.88 *Assignment of permit.* Any proposed assignment of an emergency access permit must be submitted in

duplicate, within 90 days after the date of its execution, to the Regional Administrator for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 244.75 and 244.76; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 244.89 *Causes for termination of permittee's rights.* (a) The regional administrator in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 244.70 to 244.92 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the regional administrator, in accordance with any requirement of such permit or knowing such representation to be false, or make such representation in reckless disregard of the truth.

(b) The regional administrator, in his discretion may elect to terminate any permit issued under §§ 244.70 to 244.92, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 10 days after service of written notice thereof by the regional administrator.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 244.70 to 244.92, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 244.70 to 244.92 to submit to and be bound by arbitration pursuant to §§ 244.79 to 244.81.

§ 244.90 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract which will require the licensee to comply with all the applicable provisions of §§ 244.70 to 244.92, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the regional administrator will take such action as may be appropriate under the provisions of the timber sale contract.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the regional administrator, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract. In such event the permittee shall be bound by the decision of the regional administrator subject, however, to a right of appeal pursuant to § 244.92 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative a permittee who believes that a licensee has violated the terms of the timber sale contract respecting the use of the permittee's roads may proceed against the licensees in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 244.91 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 244.92 *Appeals.* An appeal, pursuant to the rules of practice, Part 221, of this chapter, may be taken from any final decision of the regional administrator, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

R. D. SEARLES,
Acting Secretary of the Interior.

JUNE 16, 1952.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F. R. Doc. 52-6735; Filed, June 19, 1952; 8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR Part 905]

[Docket No. AO-209-A4]

HANDLING OF MILK IN OKLAHOMA CITY, OKLAHOMA, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Oklahoma City, Oklahoma, on March 3-4, 1952, pursuant to notice thereof which was issued on February 26, 1952, (17 F. R. 1689).

A decision was issued March 18, 1952 (17 F. R. 2440) with respect to certain issues raised at the hearing. Upon the basis of the evidence introduced at the hearing and the record thereof the Assistant Administrator, Production and Marketing Administration, filed his recommended decision with respect to the remaining issues and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on May 30, 1952 (17 F. R. 4951).

The material issues, findings, and conclusions, and general findings of the recommended decision (F. R. Doc 52-5998) are hereby adopted as if set forth in full herein.

Ruling on exceptions. In arriving at the findings and conclusions included in this decision each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions herein are at variance with the exceptions, such exceptions are overruled.

Determination of representative period. The month of April 1952 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Oklahoma City, Oklahoma, marketing area in the manner set forth in the amending order set forth below is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such order, as amended.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the Oklahoma City, Oklahoma, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Oklahoma City, Oklahoma, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to

formulate marketing agreements and orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the order set forth below which will be published with this decision.

This decision filed at Washington, D. C., 17th day of June 1952.

[SEAL] CHARLES F. BRANNAN, *Secretary of Agriculture.*

Order[1] Amending the Order, as Amended, Regulating the Handling of Milk in the Oklahoma City, Oklahoma, Marketing Area

§ 905.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Oklahoma City, Oklahoma, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Oklahoma City, Oklahoma, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended as follows:

1. Delete § 905.51 (a) and substitute therefor the following:

(a) *Class I milk.* The basic formula price plus $1.70 during the months of April, May, and June and plus $1.90 during all other months: *Provided*, That for each of the months of September, October, November, and December, such price shall not be less than that for the preceding month, and that for each of the months of April, May, and June such price shall be not more than that for the preceding month. To this price add or subtract a "supply-demand adjustment" computed as follows:

(1) Divide the total receipts of producer milk in the first and second months preceding by the total gross volume of Class I milk (excluding interhandler transfers and sales by producer-handlers and handlers partially exempt from this subpart pursuant to § 905.61) for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the Class I utilization percentage;

(2) Compute a "net utilization percentage" by algebraically subtracting from the Class I utilization percentage computed pursuant to subparagraph (1) of this paragraph, the standard utilization percentage shown below:

Month for which price applies	Months used in computation	Standard utilization percentage
January	November-December	110
February	December-January	114
March	January-February	118
April	February-March	120
May	March-April	124
June	April-May	127
July	May-June	132
August	June-July	131
September	July-August	127
October	August-September	116
November	September-October	108
December	October-November	107

(3) For each minus percentage point in excess of 2 in the "net utilization percentage" the Class I price shall be increased 3 cents in January, February, March, July, and August; 2 cents in April, May, and June; 4 cents in September, October, November, and December; and for each plus percentage point in excess of 2 in the "net utilization percentage" the Class I price shall be decreased 3 cents in January, February, March, July, and August; 4 cents in April, May, and June; and 2 cents in September, October, November, and December: *Provided*, That in no event shall an adjustment made pursuant to this subparagraph exceed 50 cents per hundredweight.

2. Amend § 905.22 (j) (1) to read as follows:

(1) On or before the 10th day of each month the minimum price for Class I milk computed pursuant to § 905.51 (a) and the Class I butterfat differential computed pursuant to § 905.52 (a) both for the current month; and on or before the 5th day of each month the minimum price for Class II milk pursuant to § 905.51 (b) and the Class II butterfat differential computed pursuant to § 905.52 (b), both for the previous month; and

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Order of the Secretary Directing That a Referendum be Conducted Among the Producers Supplying Milk to the Oklahoma City, Oklahoma, Marketing Area; Determination of a Representative Period; and Designation of an Agent to Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among the producers (as defined in the order, as amended, regulating the handling of milk in the Oklahoma City, Oklahoma, marketing area), who, during the month of April 1952, were engaged in the production of milk for sale in the marketing area specified in the aforesaid order to determine whether such producers favor the issuance of an order, amending the order, which is filed simultaneously herewith.

The month of April 1952 is hereby determined to be the representative period for the conduct of such referendum.

Kenneth M. Fell is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for conducting of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 10th day from the date this referendum order is issued.

[F. R. Doc. 52-6776; Filed, June 19, 1952; 8:57 a. m.]

[7 CFR Part 951]

[Docket No. AO 135-A3]

HANDLING OF TOKAY GRAPES GROWN IN CALIFORNIA

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO AMENDED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Lodi, California, beginning on March 31, 1952, after notice thereof published in the FEDERAL REGISTER (17 F. R. 1506, 2133), on proposed amendments to Marketing Agreement No. 93, as amended (hereinafter referred to as the "marketing agreement"), and Order No. 51, as amended (7 CFR Part 951; 16 F. R. 9353, 10016), hereinafter referred to as the "order", regulating the handling of

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

Tokay grapes grown in the State of California, to be made effective pursuant to the provisions of the agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

On the basis of the evidence introduced at the hearing, and the record thereof, the Assistant Administrator, Production and Marketing Administration, on May 22, 1952, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F. R. Doc. 52-5894; 17 F. R. 4855, 5043). No exception to said recommended decision was filed.

The material issues, findings and conclusions, and the general findings of the recommended decision (F. R. Doc. 52-5894; 17 F. R. 4855, 5043) are, except as hereafter otherwise provided, approved, adopted, and incorporated herein as the material issues, findings and conclusions, and general findings of this decision as if set forth in full herein. As indicated in the recommended decision, the area of production will be contracted to include, instead of the State of California, only San Joaquin County (comprising the Lodi District) and Sacramento County (comprising the Florin District). In view of the continuing differences in the production and marketing of Tokay grapes grown in these counties, there will be applicable to the newly defined production area the different terms and provisions in the present regulatory program that give due recognition to such differences. For example, there will continue to be applicable the provisions with respect to different grade and size limitations governing shipments of Tokay grapes produced in such counties. Therefore, paragraph (c) of the general findings included in said recommended decision is revised to read as follows:

(c) The marketing agreement, as hereby proposed to be amended, and the order, as hereby proposed to be amended, prescribe, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of the Tokay grapes covered thereby.

Amendments to the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Tokay Grapes Grown in San Joaquin and Sacramento Counties in the State of California," and "Order Amending the Order, as Amended, Regulating the Handling of Tokay Grapes Grown in the State of California," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. The aforesaid amendments shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached agreement amending the marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said agreement are identical with those contained in the attached order which will be published with this decision.

Done at Washington, D. C., this 17th day of June 1952.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order[1] *Amending the Order, as Amended, Regulating the Handling of Tokay Grapes Grown in the State of California*

§ 951.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of this order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and the rules of practice and procedure, as amended, effective thereunder (7 CFR part 900), a public hearing was held at Lodi, California, beginning on March 31, 1952, upon proposed amendments to the marketing agreement, as amended, and Order No. 51, effective August 20, 1940, as amended (7 CFR Part 951; 16 F. R. 9353, 10016), regulating the handling of Tokay grapes grown in the State of California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended, and as hereby further amended, regulates the handling of Tokay grapes grown in San Joaquin and Sacramento Counties in the State of California in the same manner as, and are applicable to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which hearings have been held;

(3) The said order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of the grapes covered thereby;

(4) The said order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to any sub-division of the production area would not effectively carry out the declared policy of the act; and

(5) All handling of Tokay grapes which are grown in the production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of Tokay grapes grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

1. Delete § 951.4 *Grapes* and insert, in lieu thereof, the following:

§ 951.4 *Grapes.* "Grapes" means all strains of Tokay grapes grown in the production area.

2. Delete § 951.7 *Handle* and insert, in lieu thereof, the following:

§ 951.7 *Handle.* "Handle" is synonymous with "ship" and means to sell, load in a conveyance for transportation, offer for transportation, transport, or in any other way to place grapes in the current of commerce between any point within the production area and any point outside thereof. The term "handle" also means to deliver grapes to a refrigerated storage warehouse for storage purposes, either within the production area or outside thereof. The term "handle" shall not include the sale of grapes on the vine or the transportation of grapes from a vineyard, or a packing shed within the production area, to a packing shed within the production area.

3. Delete § 951.11 *District* and insert, in lieu thereof, the following:

§ 951.11 *District.* "District" means the applicable one of the following described subdivisions of the production area:

(a) "Lodi District" means the County of San Joaquin in the State of California, and shall be divided into the following Election Districts; (1) "Acampo Election District" means the school district of Houston; (2) "Woodbridge Election District" means the school district of Woods, and that portion of the Galt Joint Union School District situated in San Joaquin County; (3) "Lafayette Election District" means the school districts of Lafayette, Henderson, Turner, Ray, Terminous and New Hope; (4) "Victor Election District" means the school districts of Bruella, Victor, Lockeford, Oak View and Clements; (5) "Alpine Election District" means the school districts of Alpine and Lodi; (6) "Live Oak Election District" means all of the school districts in the Lodi District, other than those included in the Acampo, Woodbridge, Lafayette, Victor, and Alpine Election Dis-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met. When this order becomes effective, the part heading thereof that will appear in Title 7 of the Code of Federal Regulations will be "Part 951—Tokay Grapes Grown in San Joaquin and Sacramento Counties in the State of California" instead of "Part 951—Tokay Grapes Grown in California."

tricts. The boundaries of the foregoing school districts shall be those in effect on October 1, 1947.

(b) "Florin District" means the County of Sacramento in the State of California.

4. Add after § 951.11 a new definition as follows:

§ 951.12 *Production area.* "Production area" means the Counties of San Joaquin and Sacramento in the State of California.

5. Delete the words "State of California" appearing in § 951.32 (l) and insert, in lieu thereof, the words "production area."

6. Delete paragraphs (a), (b), (c), and (d) of § 951.40 *Shippers' Advisory Committee* and insert, in lieu thereof, the following:

(a) A Shippers' Advisory Committee, consisting of seven members who are individual persons selected by the handlers in accordance with the provisions of this subpart, is hereby established. There shall be an alternate for each member of such committee. An alternate member shall, in the event of such member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) Six members and six alternate members of the Shippers' Advisory Committee shall be elected by the handlers at a general meeting of all handlers, at which each handler shall have one vote for each member position and each alternate member position for which he is eligible to vote. Three of such members shall be elected by, and from among, the five largest handlers (determined on the basis of the quantity of grapes shipped by the respective handler during the preceding season), or the employees or representatives of such handlers. Three alternate members for such members shall also be elected by such handlers. Three members and their alternates shall be elected by all other handlers. The seventh member of such committee and his alternate shall be elected jointly by the members of the Industry Committee and the other six members of the Shippers' Advisory Committee. The provisions of this paragraph shall first become effective for the election of members of the Shippers' Advisory Committee who are to serve during the season beginning April 1, 1953.

(c) Any individual person, other than a member or an alternate member of the Industry Committee, shall be eligible for membership on the Shippers' Advisory Committee.

(d) The initial meeting of handlers, at which members of the Shippers' Advisory Committee are to be elected, shall be called and conducted by the Secretary or his agent as soon as possible after the selection of initial members of the Industry Committee. Each handler who desires to vote at the said meeting for the election of members of such committee shall file with the Secretary or his agent an affidavit stating his shipments of grapes during the preceding season. Election meetings held subsequent to the initial meeting shall be called and conducted each season by the Industry Committee as much in advance of the shipping season as is practical; and each handler who desires to vote thereat shall file, with the Industry Committee, a statement of his shipments of grapes during the season immediately preceding the season during which such meeting is held.

7. Delete § 951.52 *Exemptions* and insert, in lieu thereof, the following:

§ 951.52 *Exemptions.* (a) The Industry Committee shall, subject to the approval of the Secretary, adopt such procedural rules as are necessary to govern the issuance of exemption certificates under paragraph (b) of this section.

(b) In the event the Secretary issues a regulation pursuant to § 951.51, the Industry Committee shall issue an exemption certificate to any grower who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping or having shipped in fresh fruit channels from a particular vineyard a percentage of his crop of grapes equal to (1) the average percentage of grapes produced in and so shipped from his district during the preceding three seasons or (2) the average percentage of grapes produced in and so shipped from such vineyard during the preceding three seasons, whichever percentage is the greater. The certificate shall permit such grower to ship, or have shipped, in fresh fruit channels, a percentage of his crop of grapes from such vineyard equal to such greater percentage. In computing the aforesaid quantities that were shipped during the preceding three seasons, there shall be omitted the aggregate quantities of grapes shipped under exemption certificates.

(c) If any grower is dissatisfied with the action of the Industry Committee taken with respect to his application for an exemption certificate, such grower may appeal to the Secretary: *Provided,* That such appeal shall be made promptly. The Secretary may, upon an appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(d) The Industry Committee shall, from time to time, submit to the Secretary reports stating in detail the number of exemption certificates issued, the quantity of grapes thus exempted, and such additional information with respect thereto as the Secretary may request.

8. Delete paragraph (j) of § 951.60 *Definitions* and insert, in lieu thereof, the following:

§ 951.60 *Definition.* • • •

(j) "Handle" is synonymous with "ship" and means to transport by railroad, or to prepare for transportation by railroad (which shall include, but not be limited to, packaging and precooling) or to load in a conveyance for delivery to assembly points or to transport to assembly points, for transportation by railroad, in the current of commerce between any point within the State of California and any point outside thereof within the continental limits of North America.

9. Delete § 951.87 *Grapes for charitable purposes* and insert, in lieu thereof, the following:

§ 951.87 *Grapes not subject to regulation.* (a) Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of any person to ship:

(1) Grapes in any quantity for consumption by a charitable institution;

(2) Grapes in any quantity for distribution for relief purposes;

(3) Grapes in any quantity for distribution by a relief agency;

(4) Grapes in commercial quantities for commercial conversion into by-products, including wine and juice;

(5) Grapes not in excess of such quantity as may be established by the Industry Committee, with the approval of the Secretary, as the minimum quantity below which shipments may be made without limitation; or

(6) Grapes in such types of shipments as may be established by the Industry Committee, with the approval of the Secretary, as the types of shipments which may be made without limitation.

(b) No assessment shall be levied on any grapes not subject to regulation under paragraph (a) of this section. The Industry Committee may, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent grapes so shipped from entering commercial fresh fruit channels of trade contrary to, or in violation of, this subpart.

Order Directing that Referendum be Conducted Destination of Agents To Conduct Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq), it is hereby directed that a referendum be conducted among the producers who, during the period April 1, 1951, and ending March 31, 1952, both dates inclusive (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the State of California, in the production of Tokay grapes for market, to ascertain whether such producers favor the issuance of an order amending Order No. 51, as amended, effective August 20, 1940, regulating the handling of Tokay grapes grown in the State of California; and said amendatory order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith. Oscar H. Chapin and Harry J. Krade of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, are hereby designated agents of the Sec-

retary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and Its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176).

Copies of the aforesaid annexed order, of Order No. 51, as amended, of the aforesaid procedure (15 F. R. 5176), and of this order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington, D. C., at the offices of the Field Representatives, Fruit and Vegetable Branch, Production and Marketing Administration, Room 302, 701 "K" Street, Sacramento, California, or 333 Fell Street, San Francisco, California, or at the office of the Tokay Industry Committee, Lodi, California. Ballots to be cast in the referendum, and other necessary forms and instructions, may be obtained at said offices of the Field Representatives, or from any referendum agent or appointee.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

[F. R. Doc. 52-6778; Filed, June 19, 1952; 8:57 a. m.]

[7 CFR Part 956]

[Docket Nos. AO 235, AO 235 RO1]

Handling of Milk in Sioux Falls-Mitchell, South Dakota, Marketing Area

Decision With Respect to Proposed Marketing Agreement and Proposed Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR Part 900), a public hearing was conducted at Sioux Falls, South Dakota, on August 27-30, 1951 pursuant to notice thereof which was issued on August 8, 1951 (16 F. R. 7941) upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Sioux Falls-Mitchell, South Dakota marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration on May 26, 1951, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision and opportunity to file written exceptions thereto which was published in the Federal Register on January 1, 1952 (17 F. R. 34).

Pursuant to notice issued on March 4, 1952 (17 F. R. 2020) the hearing was reopened at Sioux Falls, South Dakota, on March 24, 1952 to receive further evidence on all issues previously considered, and more particularly, with respect to the findings and conclusions contained in the recommended decision of the Assistant Administrator, Production and Marketing Administration, issued December 26, 1951.

Upon the basis of the evidence introduced at the aforesaid hearings and the records thereof, the Acting Assistant Administrator, Production and Marketing Administration, on May 13, 1952, filed with the Hearing Clerk, United States Department of Agriculture a further recommended decision and opportunity to file exceptions thereto which was published in the Federal Register on May 16, 1952 (17 F. R. 4498).

Exceptions to the recommended decisions were filed on behalf of the majority of handlers in the marketing area. In arriving at the findings, conclusions, and regulatory provisions of this decision, each of these exceptions was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings, conclusions, and actions decided herein are at variance with the exceptions such exceptions are overruled.

The major issues developed at the hearing were concerned with:

(1) Whether the handling of milk in the Sioux Falls-Mitchell, South Dakota, marketing area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate foreign commerce in milk or its products;

(2) Whether the issuance of an order regulating the handling of milk in the Sioux Falls-Mitchell, South Dakota, marketing area will tend to effectuate the declared policy of the act; and

(3) The appropriate terms and conditions to be included in an order with respect to:

(a) The scope of the regulation,
(b) The classification of milk,
(c) Transfers of milk between plants,
(d) Class prices,
(e) Payments to producers,
(f) The administrative assessment, and
(g) Other administrative provisions.

Findings and conclusions. The findings and conclusions of the recommended decision set forth in the Federal Register (17 F. R. 4498) are hereby approved and adopted as the findings and conclusions of this decision as if set forth in full herein.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Sioux Falls-Mitchell, South Dakota, Marketing Area", and "Order Regulating the Handling of Milk in the Sioux Falls-Mitchell, South Dakota, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 17th day of June 1952.

[SEAL] Charles F. Brannan,
Secretary of Agriculture.

Order[1] Regulating the Handling of Milk in the Sioux Falls-Mitchell, South Dakota, Marketing Area

§ 956.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR, supps., 900.1 et seq.), a public hearing was held at Sioux Falls, South Dakota, on August 27-30, 1951, upon a proposed marketing agreement and a proposed order, regulating the handling of milk in the Sioux Falls-Mitchell, South Dakota, marketing area. Such hearing was reopened on March 24, 1952 upon the basis of the evidence introduced at such hearing and the record thereof, it is hereby found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices for milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for such milk and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined herein, are in the current of interstate commerce or directly burden, obstruct or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expenses of the market administrator for the maintenance and functioning of such agency will require the payment monthly as his pro rata share of such expense, four cents per hundredweight, or such amount not exceeding four cents per hundredweight as the Secretary may prescribe, by each handler who operates an approved plant with respect to all milk received by him during the month from producers (including such handler's own production) and with respect to other source milk received by him during such delivery pe-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

riod which is classified as Class I, and by each handler who operates an unapproved plant with respect to all milk disposed of by him as Class I milk within the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Sioux Falls-Mitchell, South Dakota, marketing area shall be in conformity to and in compliance with the following terms and conditions:

DEFINITIONS

§ 956.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 956.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 956.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions specified in this subpart.

§ 956.4 *Person.* "Person" means any individual, partnership, corporation, association or any other business unit.

§ 956.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," and

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

§ 956.6 *Sioux Falls-Mitchell, South Dakota, marketing area.* "Sioux Falls-Mitchell, South Dakota, marketing area," hereinafter called the "marketing area," means all the territory within the corporate limits of the cities of Sioux Falls, South Sioux Falls, and Mitchell, all in the State of South Dakota.

§ 956.7 *Approved plant.* "Approved plant" means a milk plant or other facilities which operate under a permit issued by the health authorities of Mitchell, or Sioux Falls, South Dakota, and which are under regular inspection by these local health authorities, and which are used in the preparation or processing of producer milk any part of which is sold or disposed of in the marketing area as Class I milk.

§ 956.8 *Unapproved plant.* "Unapproved plant" means any milk manufacturing, processing or bottling plant other than an approved plant.

§ 956.9 *Handler.* "Handler" means:

(a) Any person, other than a producer handler, in his capacity as the operator of an approved plant(s).

(b) Any other person in his capacity as the operator of an unapproved plant where milk is processed and packaged and from which milk is disposed of on wholesale or retail routes within the marketing area unless such milk is received at and disposed of from an approved plant, or

(c) Any cooperative association with respect to milk of producers diverted by it from an approved plant to an unapproved plant for the account of such cooperative association.

§ 956.10 *Producer.* "Producer" means any person who produces Grade A milk under a farm permit or rating issued by local health authorities, which milk is (a) received at an approved plant, or (b) diverted from an approved plant to an unapproved plant for the account of a handler. Milk so diverted shall be deemed to have been received by the handler who caused it to be so diverted.

§ 956.11 *Producer milk.* "Producer milk" means all skim milk and butterfat in milk produced by a producer, other than a producer-handler, which is received by a handler either directly from producers or from other handlers.

§ 956.12 *Other source milk.* "Other source milk" means all skim milk and butterfat which is received by a handler other than that contained in producer milk.

§ 956.13 *Producer-handler.* "Producer-handler" means any person who produces milk which he distributes on wholesale or retail routes within the marketing area and who receives no milk from other producers: *Provided,* That the market administrator has determined that the maintenance, care and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging and distribution of the milk are the personal enterprise and personal risk of such person.

§ 956.14 *Delivery period.* "Delivery period" means a calendar month or the portion thereof during which this subpart is in effect.

MARKET ADMINISTRATOR

§ 956.20 *Designation.* The agency for the administration of this subpart shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 956.21 *Powers.* The market administrator shall have the following powers with respect to this subpart.

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 956.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 956.72 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this subpart, and, upon request by the Secretary, surrender the same to such person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the date upon which he is required to perform such acts, has not made (1) reports pursuant to § 956.30, or (2) payments pursuant to §§ 956.65, 956.69, and 956.71;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this subpart; and

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each delivery period as follows:

(1) On or before the 3d day of each delivery period, the minimum prices for skim milk and butterfat (i) in Class I milk computed pursuant to § 956.50 (a) for the current delivery period, and (ii) in Class II milk computed pursuant to § 956.50 (b) for the preceding delivery period; and

(2) On or before the 8th day of each delivery period, the uniform price computed pursuant to § 956.61 and the butterfat differential computed pursuant to § 956.66, both for the preceding delivery period.

REPORTS, RECORDS AND FACILITIES

§ 956.30 *Delivery period reports of receipts and utilization.* (a) On or before the 6th day after the end of each delivery period, each handler who operates an approved plant shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information with respect to all milk received from producers, all milk, skim milk, cream, and milk products received from other handlers, and all other source milk (ex-

cept nonfluid milk products disposed of in the form in which received without further processing or packaging by the handler) received at his approved plants:

(1) The quantities of skim milk and butterfat contained in such receipts and their sources;

(2) The utilization of such receipts; and

(3) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

(b) On or before the 6th day after the end of each delivery period, each handler who operates an unapproved plant shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his total disposition within the marketing area of Class I milk from such plant.

§ 956.31 *Producer payroll reports.* On or before the 20th day after the end of each delivery period each handler who operates an approved plant shall submit to the market administrator his producer payroll for such delivery period, which shall show (a) the pounds of milk and the percentages of butterfat contained therein received from each producer; (b) the amount and date of payment to each producer or cooperative association; and (c) the nature and amount of each deduction or charge involved in the payments made to producers or cooperative associations.

§ 956.32 *Other reports.* Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.

§ 956.33 *Records and facilities.* Each handler shall maintain and make available to the market administrator or his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or to establish the correct data with respect to:

(a) The receipts and utilization of all producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of butterfat and skim milk contained in or represented by all milk, skim milk, cream and milk products on hand at the beginning and end of each delivery period.

§ 956.34 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such 3 year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 956.40 *Skim milk and butterfat to be classified.* Skim milk and butterfat contained in all milk, skim milk, cream, and milk products received during the delivery period by a handler and required to be reported pursuant to § 956.30 (a) shall be classified by the market administrator pursuant to §§ 956.41 to 956.45, inclusive.

§ 956.41 *Classes of utilization.* Subject to the conditions set forth in §§ 956.43 and 956.44 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in fluid form as milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream, either sweet or sour (including any mixture of butterfat and skim milk containing more than 6 percent butterfat except mixes for ice cream and frozen desserts) (2) disposed of as or used to produce any other milk product required by the health authorities in the marketing area to be produced from Grade A milk and (3) all skim milk and butterfat not specifically accounted for as Class II milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section Class II shall be (1) all skim milk which is dumped or disposed of as livestock feed: *Provided*, That in the case of skim milk which is dumped the handler shall notify the market administrator in advance of his intention to dump such skim milk, and (2) all skim milk and butterfat (i) used to produce any milk product not specified in paragraph (a) of this section, (ii) in actual plant shrinkage supported by adequate plant records up to but not in excess of two percent of the total receipts of skim milk and butterfat in producer milk, other than that received from other handlers, (iii) in actual shrinkage of other source milk, and (iv) in inventory variations.

(c) *Class IIA.* Class IIA shall be all skim milk and butterfat which, during the months of February through July, both inclusive, is used to produce butter, American cheddar cheese, casein, animal feed or nonfat dry milk solids, and skim milk which is dumped: *Provided*, That the handler shall notify the market administrator in advance of his intention to dump such skim milk.

§ 956.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 956.43 *Transfers.* (a) Skim milk and butterfat, when transferred or diverted from an approved plant to another approved plant where milk is received from producers, shall be Class I if transferred or diverted in the form of milk, skim milk or cream: *Provided*, That, if the transferring handler, on or before the 6th day after the end of the delivery period during which the transfer or diversion is made, furnishes to the market administrator a statement signed by the buyer indicating that such skim milk or butterfat was used in Class II, or Class IIA such skim milk or butterfat may be assigned to the indicated class up to the amount thereof remaining in such class in the plant of the receiver after the subtraction of other source milk pursuant to § 956.46: *Provided further*, That, if other source milk has been received at either or both plants, such milk so disposed of shall be classified at both plants so as to return the higher class utilization to producer milk.

(b) Skim milk or butterfat, when transferred or diverted from an approved plant to an unapproved plant located more than 100 miles from the marketing area shall be Class I if transferred in the form of milk, skim milk, or cream.

(c) Skim milk and butterfat when transferred or diverted from an approved plant to an unapproved plant located less than 100 miles from the marketing area shall be Class I if transferred in the form of milk, skim milk, or cream unless the transferring handler reports that such skim milk or butterfat was used in Class II or Class IIA: *Provided*, That if the buyer refuses to permit the market administrator to audit his books and records, such milk, skim milk or cream shall be reclassified as Class I: *Provided further*, That if upon audit of the buyer's records, it is found that the use of skim milk and butterfat in the buyer's plant in Classes II and IIA is less than the amount stated to have been used, any amount in excess of such Class II use or Class IIA shall be classified as Class I.

(d) Skim milk or butterfat when transferred or diverted from an approved plant to a producer-handler in the form of milk, skim milk, or cream shall be classified as Class I.

§ 956.44 *Responsibility of handlers and reclassification of milk.* (a) In establishing the classification of skim milk and butterfat as required in § 956.41 the burden rests upon the handler who receives such skim milk or butterfat from producers to prove to the market administrator that such skim milk or butterfat should not be classified as Class I milk.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 956.45 *Computation of skim milk and butterfat in each class.* For each delivery period the market administrator shall correct for mathematical and other obvious errors the delivery period report submitted by each handler pursuant to § 956.30 (a) and shall compute the respective amounts of skim milk and butterfat in each class for such handler.

§ 956.46 *Allocation of skim milk and butterfat classified.* After computing the classification of all skim milk and butterfat received by a handler pursuant to § 956.45, the market administrator shall determine the classification of milk received from producers as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II, the pounds of skim milk determined pursuant to § 956.41 (b) (2) (ii);

(2) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk contained in other source milk: *Provided*, That if the receipts of skim milk in other source milk are greater than the pounds of skim milk remaining in Class II, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I. If any skim milk has been classified as Class II A, skim milk in other source milk shall be allocated to such Class II A use prior to allocation to other Class II use.

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk contained in receipts from other handlers in accordance with its classification as determined pursuant to § 956.43(a);

(4) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(5) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk contained in such handler's own production;

(6) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk reported as having been received from producers; an amount equal to the difference shall be subtracted from the pounds of skim milk in Class II: *Provided*, That any amount in excess of the pounds remaining in Class II shall be subtracted from Class I. Any amount so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

MINIMUM PRICES

§ 956.50 *Class prices.* Each handler shall pay at the time and in the manner set forth in § 956.65 not less than the prices set forth in this section for skim milk and butterfat in milk received from producers during the delivery period at such handler's plant.

(a) *Class I milk.* (1) The price per hundredweight for Class I milk containing 3.5 percent butterfat shall be the Class II price computed pursuant to paragraph (b) (1) of this section for the previous delivery period plus $1.25.

(2) The price per hundredweight for butterfat in Class I milk shall be computed by adding $25.00 to the price computed pursuant to paragraph (b) (2) of this section for the preceding delivery period.

(3) The price per hundredweight for skim milk in Class I shall be computed by (i) multiplying by 0.035 the price computed pursuant to subparagraph (2) of this paragraph, (ii) subtracting the result from the price computed pursuant to subparagraph (1) of this paragraph, (iii) dividing the result by 0.965, and (iv) adjusting to the nearest cent.

(b) *Class II milk.* (1) The price per hundredweight for Class II milk containing 3.5 percent butterfat shall be computed by the market administrator as follows: (i) Multiply by 1.25 the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period and subtract 5 cents, (ii) multiply by 3.5, (iii) add 21 cents, and (iv) add 3 cents for each full one-half cent that the price of nonfat dry milk solids is above 7 cents per pound. The price of nonfat dry milk solids to be used shall be the arithmetical average of the carlot prices, both spray and roller process, for human consumption delivered at Chicago, as reported by the Department of Agriculture during the delivery period. In the event the Department of Agriculture does not publish carlot prices for nonfat dry milk solids for human consumption delivered at Chicago, the average of the carlot prices for nonfat dry milk solids, spray and roller process, for human consumption, f. o. b. manufacturing plants in the Chicago area as published by the Department of Agriculture for the period from the 26th day of the preceding delivery period through the 25th day of the current delivery period, shall be used and 3 cents shall be added for each full one-half cent that the latter price is above 6 cents per pound.

(2) The price per hundredweight for butterfat in Class II shall be computed by adjusting to the nearest full cent the price computed pursuant to subparagraph (1) (i) of this paragraph and multiplying by 100.

(3) The price per hundredweight for skim milk in Class II shall be computed by (i) multiplying by 0.035 the price computed pursuant to subparagraph (2) of this paragraph, (ii) subtracting the result from the price computed pursuant to subparagraph (1) of this paragraph, (iii) dividing the result by 0.965, and (iv) adjusting to the nearest cent.

(c) *Class II A milk.* (1) The price per hundredweight for Class II A milk containing 3.5 percent butterfat shall be the Class II price computed pursuant to paragraph (b) (1) of this section minus 25 cents.

(2) The price per hundredweight for butterfat in Class II A milk shall be computed by: (i) Determining the percentage that the price computed pursuant to § 956.50 (b) (i) is of the price computed pursuant to § 956.50 (b) (1), (ii) multiplying such percentage by 25 cents, (iii) subtracting the resulting figure from the price computed pursuant to § 956.50 (b) (i), and (iv) multiplying by 100.

(3) The price per hundredweight for skim milk in Class II A shall be computed by (i) multiplying by 0.035 the price computed pursuant to subparagraph (2) of this paragraph, (ii) subtracting the result from the price computed pursuant to subparagraph (1) of this paragraph, (iii) dividing the result by 0.965 and (iv) adjusting to the nearest cent.

§ 956.51 *Emergency price provisions.* Whenever the provisions of this subpart require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose, and the specified price is not reported or published the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

DETERMINATION OF UNIFORM PRICE

§ 956.60 *Computation of the value of milk.* (a) The value of the milk received by each handler from producers during each delivery period shall be a sum of money computed by the market administrator by multiplying the hundredweight of skim milk and butterfat allocated to each class pursuant to § 956.46 by the applicable class prices, adding together the resulting amounts and adding any amounts owed by the handler pursuant to subparagraphs (1) and (2) of this paragraph.

(1) If a handler has overage of either skim milk or butterfat, the market administrator shall add an amount computed by multiplying the pounds of overage by the applicable class prices.

(2) If any skim milk or butterfat in other source milk has been allocated to Class I pursuant to § 956.46, during the months of February through July, both inclusive, the market administrator shall add an amount equal to the difference between the value of such skim milk or butterfat at the Class I price and the Class II price unless the handler can prove to the satisfaction of the market administrator that such other source skim milk or butterfat was used only to the extent that producer milk was not available.

(b) If any handler who operates an unapproved plant has disposed of Class I milk in the marketing area, the market administrator shall determine a value for such handler by multiplying the pounds of such Class I milk by an amount equal to the difference between the Class I price and the Class II price.

§ 956.61 *Computation of uniform price.* For each delivery period the market administrator shall compute a uniform price per hundredweight for milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 956.60 for all handlers who filed reports pursuant to § 956.30 and who made the payments required pursuant to §§ 956.65 and 956.69 for the previous delivery period;

(b) Subtract if the average butterfat content of the milk included in these computations is greater than 3.5 percent, or add if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 956.66, and multiplying the result-

ing amount by the total hundredweight of milk included in these computations;

(c) Subtract during each of the delivery periods of May, June and July an amount equal to 8 percent of the resulting sum;

(d) Add during each of the delivery periods of September, October and November one-third of the total amount subtracted pursuant to paragraph (c) of this section;

(e) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(f) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports or payments or delinquencies in payments by handlers. The result shall be known as the "uniform price" per hundredweight for producer milk of 3.5 percent butterfat content.

§ 956.62 *Notification of handlers.* On or before the 9th day after the end of each delivery period the market administrator shall notify each handler of:

(a) The amount and value of his milk in each class computed pursuant to §§ 956.46 and 956.60 respectively, and the totals of such amounts and values;

(b) The uniform price computed pursuant to § 956.61;

(c) The amount, if any, due such handler from the producer-settlement fund;

(d) The total amounts to be paid by such handler pursuant to §§ 956.65 and 956.71; and

(e) The amount to be paid by such handler pursuant to § 956.72.

PAYMENTS

§ 956.65 *Time and method of payments.* Each handler shall make payment for milk as follows:

(a) On or before the 15th day after the end of the delivery period during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed pursuant to § 956.61, subject to the butterfat differential computed pursuant to § 956.66.

(b) On or before the 12th day after the end of the delivery period during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and wishes to exercise such authority, an amount equal to not less than the sum of the individual payments otherwise payable to such producers pursuant to paragraph (a) of this section.

§ 956.66 *Butterfat differential.* If, during the delivery period, any handler has received from any producer milk having an average butterfat content other than 3.5 percent, such handler in making the payments prescribed in § 956.65, shall add to the uniform price for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent not less than, or shall deduct from the uniform price for each one-tenth of one percent that such average butterfat content is below 3.5 percent not more than, an amount computed by the market administrator as follows: To the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period in which the milk was received, add 20 percent, divide the result obtained by 10, and adjust to the nearest cent.

§ 956.67 *Adjustment of errors in payment to producers.* Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 956.65 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 956.68 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 956.69 and 956.71 and out of which he shall make all payments to handlers pursuant to §§ 956.70 and 956.71: *Provided,* That the market administrator shall offset any payment due any handler against payments due from such handler.

§ 956.69 *Payments to the producer-settlement fund.* On or before the 10th day after the end of each delivery period (a) each handler who operates an approved plant shall pay to the market administrator for payment to producers through the producer-settlement fund the amount, if any, by which the total value computed for him pursuant to § 956.60 (a) for such delivery period is greater than the sum required to be paid by such handler pursuant to § 956.65, and (b) each handler who operates an unapproved plant shall make payment to the market administrator of an amount equal to the value computed for him pursuant to § 956.60 (b).

§ 956.70 *Payments out of the producer-settlement fund.* On or before the 11th day after the end of each delivery period, the market administrator shall pay to each handler, for payment to producers, the amount, if any, by which the sum required to be paid by such handler pursuant to § 956.65 is greater than the total value computed for him pursuant to § 956.60.

§ 956.71 *Adjustment of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund made pursuant to §§ 956.69 and 956.70, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 956.70 the market administrator shall, within 5 days, make such payment to such handler.

§ 956.72 *Expense of administration.* As his pro rata share of the expense of administration of this subpart, each handler who operates an approved plant shall pay to the market administrator, on or before the 15th day after the end of the delivery period, 4 cents per hundredweight or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe with respect to all receipts within the delivery period of (a) milk from producers including such handler's own production, and (b) other source milk which is classified as Class I milk, and each handler who operates an unapproved plant shall make such payment only with respect to Class I milk disposed of within the marketing area.

§ 956.73 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated

with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 956.80 *Effective time.* The provisions of this subpart or any amendment to this subpart shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 956.81.

§ 956.81 *Suspension or termination.* The Secretary may suspend or terminate this subpart or any provision of this subpart whenever he finds this subpart or any provision of this subpart obstructs or does not tend to effectuate the declared policy of the act. This subpart shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

§ 956.82 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations under this subpart the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 956.83 *Liquidation.* Upon the suspension or termination of the provisions of this subpart except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 956.90 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 956.91 *Separability of provisions.* If any provision of this subpart or its application to any person or circumstances, is held invalid, the application of such provision and of the remaining provisions of this subpart to other persons or circumstances shall not be affected thereby.

Order Directing That a Referendum be Conducted Among Producers: Determination of a Representative Period; and Designation of an Agent to Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among producers (as defined in the proposed order regulating the handling of milk in the Sioux Falls-Mitchell, South Dakota, marketing area which is filed simultaneously herewith) who, during the month of March 1952 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order to determine whether such producers favor the issuance of the order which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

The month of March 1952 is hereby determined to be a representative period for the conduct of such referendum. Hobart E. Crone is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177).

Done at Washington, D. C., this 17th day of June 1952.

[F. R. Doc. 52-6777; Filed, June 19, 1952; 8:57 a. m.]

[7 CFR Part 985]

[Docket No. AO-240]

HANDLING OF MILK IN MUSKEGON, MICH., MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order regulating the handling of milk in the Muskegon, Michigan, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 20th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed marketing agreement and the proposed order were formulated was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of a petition filed by the Michigan Milk Producers' Association on behalf of the Muskegon Milk Producers' Association and was held at Muskegon, Michigan, January 21–25, 1952, pursuant to notice thereof which was issued on January 5, 1952 (17 F. R. 161).

The material issues of record related to:

(1) Whether the handling of milk in the Muskegon, Michigan, marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce;

(2) Whether the issuance of a marketing order for the Muskegon, Michigan, marketing area will tend to effectuate the declared policy of the act;

(3) The extent of the marketing area;

(4) What milk should be priced under an order;

(5) The classification of milk and milk products;

(6) The determination and level of class prices;

(7) The method of distributing payments to producers; and

(8) Administrative provisions.

Findings and conclusions. Upon the basis of evidence adduced at the hearing and on the record thereof, it is hereby found and concluded that:

(1) Character of commerce. The handling of milk produced for the Muskegon, Michigan, marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products. Substantial interstate movement occurs with respect to milk and the milk products produced therefrom in the supply area for the Muskegon fluid milk market. Producers supplying milk to distributors in the Muskegon marketing area have their farms intermingled with those of dairy farmers who ship to milk plants which regularly supply Detroit. The Detroit supply area, in turn, includes regular shippers located in Indiana and Ohio.

Also intermingled with the producers who supply this Muskegon fluid milk market are a large number of producers who are shipping milk to milk plants at which evaporated milk, butter, cheese, sweet cream, and dried milk and skim milk products are manufactured for sale throughout the United States. In fact it is common practice during the season of flush milk production for farmers to deliver directly to manufacturing plants a part or all of their milk approved for fluid consumption.

The flow of milk into the Muskegon fluid market is affected by the relationship of that market's prices to the prices paid by competing fluid markets and by the manufacturing milk plants. Price relationships which interrupt or interfere

with the distribution of milk in this region to the fluid and manufacturing markets in accordance with the relative value of milk for such outlets tend to burden, obstruct, and affect interstate commerce in milk and its products.

The excess milk over and above fluid requirements for the Muskegon market is normally transferred to plants which manufacture butter, evaporated milk, and nonfat dry milk solids for sale in interstate markets. This excess milk represents principally the necessary reserve of milk to meet fluctuation in daily and seasonal supplies and requirements. In 1951 the reserve milk transferred to manufacturing plants amounted to 17 percent of total receipts from producers.

Prices paid for milk by the fluid market, if out of line with prices paid by manufacturing plants, tend to increase or reduce this quantity of milk which is produced under the sanitary requirements of the fluid market but must be utilized in manufactured products. Therefore, the prices paid producers supplying the fluid market must be maintained in reasonable alignment with prices paid to manufacturing producers. It is also necessary to prevent unfair competitive pricing of the fluid milk market's surplus which is transferred to manufacturing plants at a price lower than the price offered by manufacturing plants to their regular producers.

There is also direct interstate movement of pasteurized, bottled milk from the marketing area. Lake vessels docking at both Muskegon and Grand Haven are supplied with milk by dealers in the respective cities. These vessels travel to ports in Illinois, Wisconsin, and Ohio.

(2) *Need for regulation.* Marketing conditions in the Muskegon area indicate that the issuance of a marketing order, such as that set forth herein, will tend to effectuate the declared policy of the act with respect to milk produced for the Muskegon fluid milk market.

Stability of marketing conditions and reasonable certainty of an adequate supply of pure and wholesome milk can be assured for the Muskegon marketing area only when all milk handlers in the area have reasonably equal costs of milk according to use and only when farmers supplying the market receive substantially the same prices per hundredweight for milk of equal quality.

These conditions do not now exist. A cooperative association of producers supplies all the milk used by dealers whose plants are located in Muskegon and Muskegon Heights and to one whose plant is located in a nearby village. The association sells milk on a class use basis whereby each of the distributors pays the same price for milk used in each of four specified classes. The association pools the sales returns, and each producer is paid the uniform price, subject only to variations in butterfat content and in seasonality of production.

A diversity of milk purchase plans is in effect at other plants in the area. One of the Grand Haven distributors testified that he purchased milk from producers on a "plant requirements" basis. He pays an announced price on all milk used at the plant, the bulk of such milk being bottled for sale as fluid milk and cream and smaller quantities being used in ice cream or for the manufacture of cottage cheese and similar products. Milk which this distributor cannot utilize in his plant is disposed of to milk manufacturing plants, and producers are paid the net utilization value of such milk. This distributor commonly depends upon purchases of supplemental milk in the fall season of low production and in the July and August resort season of peak sales. He does not pay producers in accordance with seasonality of production. Another handler in the area testified that he also purchased on a plant requirement basis but bought only negligible quantities of supplemental milk.

A further variety of milk purchasing plans is provided by dealers operating plants outside the marketing area but from which some milk is sold in the area. Testimony based upon a comparison of producers' settlement statements showed that producers were paid at an announced price on varying percentages of their short-season deliveries, that this percentage may be changed without prior notice to the producer, and that neither the settlement statement nor any other communication from the distributor enabled producers to determine precisely on what basis they were being paid for milk.

These variations in price plans and in net prices paid to producers reflect different raw material costs to the various dealers who are selling milk in the marketing area. A condition of unequal costs among the dealers may cause them to attempt to economize by reducing prices to producers. This in turn would tend to stimulate successive price reductions by competitors. This development is contrary to the interests of producers and over a period of time may jeopardize an adequate supply of milk. Alternatively, some handlers may attempt to achieve equality by reducing the quantity of their purchases of milk in order to obtain the highest possible proportion of the higher valued uses of milk. This reaction, however, may result in intermittent shortages of supply for the market.

If producers receive widely varying prices for their milk, they tend to shift around milk dealers and to shift in and out of the market. Such shifts may become sufficiently frequent as to jeopardize a dependable supply of pure and wholesome milk.

A marketing agreement and order program is needed to establish and maintain orderly marketing conditions throughout the marketing area. The auditing of the utilization of all milk received by handlers, the checking of butterfat tests and weights of all producer milk, and the publication of complete supply and use data for the market will aid in this objective by assuring producers that they will receive a proper accounting for their milk and by providing full information on market developments.

(3) *Marketing area.* The marketing area should be defined to include all of the territory within the outer boundaries of the cities of Muskegon and Grand Haven and the densely populated areas surrounding these cities. This may be accomplished by defining the marketing area to include all of the territory within the boundaries of Muskegon County and five townships in Ottawa County.

Producers who are members of the cooperative association which is the proponent of the order supply milk to the distributors serving customers in all portions of this area. The farms of these producing members are intermingled with those of nonmembers serving the other distributors in the area. Moreover there is direct competition between dealers whose plants are located in each locality within the marketing area and dealers whose plants are located at one or more other points within the area.

Health regulations are substantially similar throughout the area. The regulations of the State of Michigan provide a uniform minimum standard and these standards are modified only by somewhat more rigid requirements in a few localities. Several of these local health regulations have recently been revised to a point where there is now substantially complete acceptance in all portions of the marketing area of milk eligible for fluid use in any locality within the area.

The Muskegon marketing area has been defined on the basis of these interrelationships of supply and distribution. The area so defined is a continuous, homogeneous area within which distributors should be charged the same price for milk used in a given class and producers be paid a uniform price.

One of the dealers whose plant is located in Grand Haven and a group of producers supplying that dealer contended that the territory served by this dealer should be excluded from the marketing area. However, much of his distributive business covers territory which is also served by handlers whose plants are located in Muskegon County. The handler's proposal that all the townships in Ottawa County be excluded disregards the fact that one Muskegon County handler has been serving the Spring Lake area, right up to the outskirts of Grand Haven, for over 20 years and that his routes have been extended into Grand Haven since health regulations were revised to permit such extension. The closeness of inter-dealer competition between Grand Haven and Muskegon is indicated by the fact that retail and wholesale prices in the two markets are usually identical.

Similarly, producers supplying a dealer whose plant is located in Whitehall and who distributes milk in that village, in Montague, and in two or three surrounding townships proposed that this area be excluded. Again, however, the intercompetition, both on the supply side and in distribution, between this plant and other plants in the marketing area prohibit the exclusion of this territory.

Producers proposed that eight townships in Newaygo County be included in the marketing area. Testimony revealed that there is some distribution of milk in these townships from plants located in Muskegon County but that this represents a recent development. No data or reliable estimates were available to show the comparative volumes of milk served by such handlers as compared with sales by local handlers or

from plants located outside the proposed area. Producers also proposed the inclusion of six towns in Oceana County. There was, however, no evidence that distributors from this territory are actively competing with handlers in the marketing area. Further, the handlers located in the marketing area do not regularly distribute milk in Oceana County, their interest being confined to the furnishing of comparatively small quantities of supplemental milk. Testimony revealed that no fluid milk plants are located in Robinson Township of Ottawa County. Since the distributors who are supplying milk to this township will be regulated by virtue of distribution in other portions of the marketing area, there is no need to include Robinson Township. In the circumstances, the townships in Oceana and Newaygo Counties and Robinson Township in Ottawa County have been omitted from the marketing area.

(4) *Milk to be priced.* The milk to be regulated by the order should be that which is regularly delivered to plants from which milk is distributed in the marketing area. To be eligible for such distribution milk must be produced, processed, and distributed in conformity with applicable health regulations, but such compliance need not be specified in the order. The milk to be priced and pooled under the order should be that which constitutes the regular source of supply for the marketing area. This supply may be delineated by providing appropriate definitions of the terms "handler", "producer", and "pool plant".

A "handler" should be defined as any person who operates a plant from which fluid milk products are disposed of for fluid consumption directly to consumers in the marketing area. Such a definition is designed to include all persons whom it is necessary to regulate under the order to accomplish the purposes of the act. The definition should include also any cooperative association with respect to that milk for which the cooperative assumes the responsibility for obligations under the order, as in the case of surplus milk diverted for the account of the cooperative.

A few milk plants located outside the marketing area dispose of some milk on routes extending into the area. If the amount of such milk is not large, its sale has little or no effect on the marketing of milk in the area. Application of order pricing and payment provisions to these distributors would entail effort and expense without contributing significantly to orderly marketing in the area. At the hearing it was proposed that handlers operating bottling plants outside the marketing area and disposing of not more than an average of 600 pounds of Class I milk per day on such routes be exempt from all except the reporting and auditing provisions of the order. Several handlers suggested lower limits on such exemption, ranging down to 200 pounds per day. However, since the definition includes sales on routes partly within the marketing area as well as those wholly within the area, it is concluded that such exemption should be established at 600 pounds per day.

The term "producer" should be defined in order to identify those dairy farmers who are the producers of the regular supply of fluid milk and cream for the market, and to whom the minimum prices specified in the order should be paid. Determination of producer status should be made on the basis of delivery of milk from the producer's farm to a pool plant as hereinafter defined.

The producer definition should allow a handler occasionally to divert the milk of some producers to nonpool plants if the handler reports the milk as producer receipts at his pool plant. This provision will facilitate interplant movements of milk for the purpose of adjusting to short-time variations in supply and requirements without depriving the farmers producing the milk of their status as producers.

The determination of pool plant status is the essential part of the determination of which dairy farmers are to be included in the market-wide pool. Therefore, specific requirements for pool plants are needed to define the supply which is generally regarded as a part of the fluid market.

Since the supply area for the Muskegon market overlaps the supply areas of other fluid markets and the manufacturing milk production area, the pool plant definition should include a requirement that a substantial portion of the milk received at the plant be disposed of as fluid products in the marketing area. This requirement is intended to provide for including in the pool all of the plants which have significant fluid milk and cream sales in the marketing area. Fluid milk plants which primarily serve markets outside the marketing area but make a few sales inside the area, and plants which are primarily manufacturing milk plants would be excluded. Such plants cannot be regarded as a part of the Muskegon fluid milk and cream market.

The order proponents originally suggested a requirement that 10 percent of the receipts from dairy farmers be disposed of in the marketing area directly to consumers. At the hearing they proposed that the requirement be raised to 20 percent. However, no specific data were available in support of such change. It appears that this pool plant requirement should be kept at the lower level until the more complete data which will result from operation of the order reveal whether or not the lower limit results in instability of marketing conditions.

A definition of "other source" milk is included to distinguish it from the regular milk supply for the fluid market which is priced under the order. The principal category of other source milk consists of that sold in the marketing area from plants which do not have a sufficient proportion of in-area sales to qualify as pool plants. Prices paid for such milk may differ substantially from those paid to producers at pool plants. The order does not regulate the prices to be paid to dairy farmers by operators of these plants having a major proportion of their sales outside the Muskegon marketing area and they remain free to compete for milk supplies without regard to the order. However, on the quantities of milk sold by such operators within the marketing area, there must be assurance that the cost of milk is at least equal to the prices paid to producers by operators of pool plants. The order provides for compensatory payments on such sales at a rate equal to the difference between the Class I and Class II prices. This rate provides a wholly objective, uniform rate which will assure that payments on in-area sales from non-pool plants are at least equal to the order prices.

(5) *Classification of milk.* Milk should be classified in two classes reflecting the principal differences in the value and in the quality of milk required for different uses. Class I should include all skim and butterfat disposed of for consumption as milk, skim milk or cream for fluid consumption, flavored milk, plant loss of producer milk in excess of 2 percent, and skim milk and butterfat not accounted for in Class II utilization. Class II should include skim milk and butterfat used to produce ice cream or ice cream mix, dried whole milk, nonfat dry milk solids, whole or skimmed evaporated or condensed milk, sweetened or unsweetened, in bulk or in hermatically sealed cans, butter, or cheese (including cottage cheese), or in plant loss of producer milk not in excess of 2 per cent and all plant loss of other source milk, and all skim milk dumped or disposed of as livestock feed.

Representatives of health departments in the two major cities of the marketing area testified that milk sold for fluid consumption and that used to produce skim milk, flavored milk, or cream sold for fluid consumption must be produced and handled in compliance with the same sanitation standards. These standards are substantially uniform in both of the cities.

Handlers proposed that a separate class be established for fluid cream for the purpose of pricing it at a lower level than fluid milk and other Class I products. This follows the past custom in the market of pricing whole milk used to make cream at a lower price. The problem is different, however, where the skim milk and butterfat used in each product in each class are accounted for separately. Under this system the butterfat differential is the major factor in determining the cost of cream. The handler butterfat differential provided by the order for Class I milk is somewhat lower than that proposed by the producers at the current prices of butter. As a result, even though a separate class is not established for cream, its cost to handlers will be no higher than the prices they proposed.

The producers' proposal that milk which is dumped or disposed of for livestock feed be considered as Class II should be modified to apply only to skim milk so utilized. Butterfat in the form of cream is much more valuable in relation to its bulk than skim milk and there should be no necessity for emergency disposition of this component.

With the exception of the cream classification and the classification of milk dumped or fed to livestock there

was no opposition to the proposed classification provisions.

Since some handlers combine operations which utilize other source milk in the same plants as those which handle producer milk for the fluid market, it is necessary to provide a method for allocating such other source milk to the classes of utilization. Since producer milk is the milk which is regularly available for fluid consumption in the marketing area, the method of allocation provides that producer milk shall be allocated to Class I to the extent that such use is available.

Producers proposed that actual plant loss, but not to exceed 2 percent of producer milk received, be allowed in the lowest price class, any in excess of this amount to be in Class I. With plant operation of average efficiency, losses normally should not exceed 2 percent. Unlimited allocation of plant loss to Class II would place a premium on unaccounted-for milk and encourage incomplete records of Class I utilization. Any plant losses of producer milk in excess of 2 percent should, therefore, be included in Class I. The standard provisions for prorating loss between producer and other source milk, and allowing for loss on diverted producer milk at the plant where actually received, should also be included in the order.

Provision is made for classification of milk transferred between pool plants and between pool plants and non-pool plants. In the case of transfers between pool plants, transfer is permitted in any agreed class in which the transferee plant has utilization in an amount equal to or greater than the amount so transferred, after allocating any other source milk, since under a market-wide pool the classification of milk transferred between pool plants may represent any agreed producer milk use without affecting the payment to producers. Both handlers are required to report the transferred milk in the agreed classification; otherwise milk and cream transfers are classified as Class I.

In the case of transfers from a pool plant to a non-pool plant, a requirement that producer milk be allocated to the higher value uses in the transferee plant might make it difficult for pool plant operators to dispose of surplus milk. It is concluded that transfers from a pool plant to a non-pool plant in the form of milk, skim milk or cream should be in Class I, but that such transfers may be classified as Class II if so reported by the pool plant operator and if the transferee or another plant to which the product may be moved by the transferee has an equivalent use in Class II and keeps books and records which make it possible for the market administrator to verify such use.

(6) *Class prices.* Since the Muskegon fluid milk market supply is obtained from a region in which large quantities of milk are delivered to plants which manufacture various milk products, it is necessary that the price for the fluid market be closely related to the level of prices being paid at competing manufacturing plants. There are some differences from time to time between the prices paid at plants manufacturing different products. Therefore, the Class I price should be related to that particular manufacturing milk price which represents the best outlet for manufacturing milk at any particular time. The method of accomplishing this has been to relate the Class I price to a series of basic formula prices which represent different kinds of manufacturing milk prices. A differential should be added to the highest of the prices determined by 4 separate alternate price formulas to determine the Class I price for each month.

(a) *Basic formula prices.* The basic formula price to be used in determining the Class I price should be the higher of the prices paid at 18 Midwestern condenseries, a formula based on market prices of butter and non-fat dry milk solids which measures the value of milk to be used for the manufacture of these products, a formula based principally on cheese prices which will measure the value of milk used in cheesemaking, and prices paid by three dairy manufacturing plants located in Michigan. The first three of these basic formula prices measure the value of milk used in each of the 3 major manufactured dairy products, all of which are marketed nationally. The prices paid at the Michigan plants will reflect local manufacturing firms whenever these are in excess of the national averages.

Use of the highest formula prices as the basic formula price would base the Class I price on the most favorable manufacturing use for milk in each month. In an area where all important dairy products are manufactured, fluid milk markets must compete for milk with plants making the highest valued products. The Class I price should therefore be based on the formula representing the highest value of milk for manufacturing.

These basic prices are the ones proposed by the proponents with the exception of the cheese formula. Testimony at the hearing indicated that the proposed butter-cheese formula was originally designed to utilize the market prices of butter and cheese as a measure of the value of milk purchased by condenseries. It was further brought out that the formula did not reflect current proportionate marketings of cheese and butter. The formula included in the order measures only the value of milk for cheese making. Over the past four year period the prices resulting from this formula correlate extremely closely with prices paid for milk by cheese factories in Wisconsin. The formula utilizes yields of 8.53 pounds of cheese and 0.902 pound of butter per 100 pounds of milk and a 33.4-cent "make allowance."

The cheese prices used in the formula are those reported by the Dairy and Poultry Market News Service of the USDA in cooperation with the Wisconsin State Department of Markets. They have the advantage over prices derived from activities on the Wisconsin Cheese Exchange of representing a much larger and more uniform volume of transactions, of being based on actual transfers of cheese from factories to buyers, and of being reported daily.

(b) *Class I price.* The Class I price should be determined by adding $1.10 to the basic formula price.

Producers proposed that a Class I price differential of $1.20 be added to the basic formula price each month. Although records of milk prices, production, and sales for the entire marketing area are not available, satisfactory records are available for milk supplied to plants in Muskegon and vicinity and these account for the great bulk of sales in the entire marketing area. Over the 3-year period, 1949 through 1951, the Class I prices which would have prevailed under the order would have averaged $4.28 per hundredweight as compared with an actual average price of $4.37 per hundred pounds which applied to the milk sold for fluid uses during the same period. In the fall months, October, November, and December, of 1948, 87 percent of the milk supplied by producers was utilized for fluid purposes, indicating sufficient milk for the market but no significant oversupply. However, during the 12-month period October 1948 through September 1949, fluid milk prices in the market averaged 49 cents above those which would have prevailed under the order. Milk supplies increased markedly, and in the fall of 1949 only 77 percent of producer receipts were utilized for fluid purposes. This trend was reversed in 1950. During the 12 months preceding October of that year, market prices for fluid milk averaged 3 cents above the Class I prices which would have prevailed under the order. Producer receipts increased somewhat during this period but there was a greater increase in sales, and 89 percent of producer milk was used for fluid milk purposes during the fall months. A somewhat similar trend continued in 1951. During the period October 1950 through September 1951 prices in the market averaged 2 cents more than they would have under the order and 91 percent of producer milk was utilized for fluid purposes during October–December 1951.

The average of the prices which would have resulted had the order herein recommended been in effect during the period 1948 through 1951 would have been very close to the average of the prices which actually were paid during this period. However, the movement of these two price series was significantly different and it appears that the order would have provided much more timely adjustments to actual conditions. In early 1949 the order would have provided a much more rapid downward readjustment of fluid milk prices and this readjustment would have tended to avoid the oversupply of milk in late 1949. On the other hand the more rapid upward adjustment which would have occurred in early 1951 would have encouraged additional supplies during the remainder of that year and might have alleviated the moderate shortages which developed in August and November. A Class I price differential of $1.10 is also indicated as the appropriate relationship between prices in Muskegon and in Detroit at points where the supply areas for these two markets overlap. The maximum location adjustment under the Detroit order is 21 cents per hundredweight of milk, and applies to plants located 97 miles or more from the City Hall. However, there is a substantially

longer haul from the territory where the milksheds overlap to points 97 miles from Detroit than to plants in Muskegon. Accordingly, the Class I price differential provided for Muskegon is 25 cents lower than in Detroit.

The producers proposed that the Class I price differential be made subject to a "supply-demand" adjustment. Such adjustments are included in several other Federal order markets, including Detroit. Their general purpose is to increase the Class I price when supplies are short in the market and to reduce prices whenever oversupplies are developing.

In a comparatively small, well-integrated market such as is represented by Muskegon there appears to be a minimum of need for a supply-demand adjustment. Past history in this market indicates that the handlers and the producers' association have experienced no undue difficulty in attracting new producers to meet expanding requirements for milk in the area. It is true that the supply area for Muskegon meets the outer edge of the Detroit procurement area. However, it does not appear that this will result in an undue shift of producers between the two markets as a result of any price differences which may result from the operation of the supply-demand adjustment in Detroit. If experience with the operation of an order in Muskegon demonstrates the need for a supply-demand adjustment, one can appropriately be considered by amendment of the order. Experience under an order will also provide more complete data on class use and on producer receipts for the entire marketing area.

(c) *Class II price.* The Class II price should reflect the value of milk for general manufacturing uses in the Muskegon milkshed. An appropriate price for this use is the higher of the average of the prices paid by three local dairy manufacturing plants and a price determined by a formula based on the market prices of butter and skim powder. The average of the prices paid by three Michigan dairy manufacturing plants, as recommended for use as an alternate basic formula price, will normally reflect the value of milk in the Muskegon area which is not used for fluid consumption as milk or cream. The three plants selected are so located that their production areas include most of the Muskegon milkshed. They manufacture evaporated milk, dry whole milk and skim milk, cottage cheese and sweet cream. They are not operated or controlled by persons who will be handlers under the order. Two of these plants are included in the 18 midwest plants used in determining the basic formula price in most Federal milk marketing orders and recommended for such use herein.

It is possible, however, that due to the limited number of plants which it is practical to use, and the limited area represented, that prices paid by these plants may be lower at times than the market prices of manufactured dairy products would justify. As a safeguard against temporary depressed prices in the local area, an alternate Class II price based on the market prices of butter and nonfat dry milk solids should be provided. A formula used in many milk markets under Federal regulation for pricing milk for manufacturing uses was proposed. This formula determines butterfat values at the average price of 92-score butter at Chicago plus 20 percent, and skim milk values at the average price of spray and roller process nonfat dry milk solids at Chicago area plants, converted to skim milk equivalent by use of a yield factor of 8.2 pounds of powder per hundredweight of whole milk. From the sum of the butterfat and skim values a manufacturing and marketing margin of 62.6 cents is deducted. Use of this formula price as an alternate Class II price would insure a price related to values of manufactured dairy products during any periods when the price paid by the particular local plants selected might be abnormally low for any reason.

(d) *Method of accounting for milk.* The classification and allocation of producer milk should be on a skim milk and butterfat basis. Because of the wide variation in the butterfat test of the various products, it is probable that the skim milk from producer milk will frequently be utilized in a different class than the butterfat from the same milk. Classification of skim milk and butterfat separately is necessary to accomplish complete classification according to use. It is also necessary to allocate producer skim milk and butterfat separately in order to give both skim milk and butterfat in producer milk preference over other source milk in the higher value uses. A continuation of the whole milk system of pricing is desirable. Class prices should be expressed as hundredweight prices, and the price for each class should be adjusted to the actual butterfat test of the class by use of the butterfat differentials set forth below.

(e) *Handler butterfat differentials.* The butterfat differentials to be paid by handlers for each one-tenth of one per cent that the butterfat content of producer milk utilized in Class I is above or below 3.5 per cent should be computed by multiplying the price of 92-score butter at Chicago by 1.25 and dividing the result by 10. The multiplier for Class II milk should be 1.15.

The Class I butterfat differential proposed by producers was 2 cents over the producer butterfat differential. This would have resulted in a differential of 9 cents when butter prices range from 60 to 65 cents, with a one-half cent increase or decrease for each 5-cent change in butter prices. Within the 60–61 cent range the rate therefore, would average 1.44 times the butter price while the changes above or below the 60 to 65-cent range of butter prices would be the rate of 1.00. No evidence was offered in support of such an extreme variation in differential rates and it appears preferable to have the differential move at a constant rate for any level of butter prices. It also appears that the butterfat differential ought not be as high as those proposed by producers. One consideration is that there have been no handler differentials in this market; only the producer differential as has been applicable and this has been at a rate ranging from 116.7 to 107.9 at butter prices ranging from 60 to 64.9 cents and gradually decreasing as the butter price increases. The somewhat lower differential included in the order also recognizes the fact that fluid cream is included in Class I and is in line with previous costs of whole milk purchased by handlers for separation into fluid cream and skim milk.

The Class II butterfat differential proposed by producers was based on the proportionate values of butterfat and skim milk reflected in the butter-powder basic formula price. The order differential of 1.15 is at essentially the same level as the producer proposal but follows the same procedure for computing butterfat differentials as is included in the vast majority of Federal milk marketing orders.

(7) *Payments to producers*—(a) Type *of pool.* Market-wide pooling of all proceeds of producer milk was proposed by the producer representatives. Marketing conditions require the payment of a uniform price to all producers representing the value of all market utilization to compensate all producers fairly for their contribution to the market supply. Some distributors buy as closely as possible to their needs and carry little or no surplus in the high production months. A cooperative handles the spring surplus production of its members and supplies several distributors with milk as needed. Producers supplying these various handler plants contribute equally to making available a year-around supply of milk but would receive widely varying returns under an individual handler pool method of payment.

Handlers are required to make payments for all producer milk received at the uniform base price for base milk and the excess price for excess milk, as explained below, either to producers directly or to a cooperative association for milk delivered by member producers. In the case of producers for whom a cooperative acts as marketing agent, payment may be made to the producer or to the cooperative, as agreed between the cooperative and the handler.

(b) *Base-excess plan.* A "base plan" for returning the proceeds of milk sales to producers in a way which will encourage more uniform seasonal production is provided. Milk is to be paid for on the basis of deliveries during the August–December period.

A base plan has been in use in the Muskegon market for several years, and a proposal was made to incorporate a base plan in the order in substantially the form now in use by the proponents. The effect of the base plan in encouraging more even production is shown by records of daily average deliveries per farm. In the Muskegon area deliveries in the highest month of 1943, the earliest year for which data were submitted, were 172 percent of the lowest month and in 1949 deliveries in the month of highest deliveries were only 135 percent of deliveries in the lowest month.

Fundamentally, the plan provides that each producer will receive the manufacturing milk price for milk delivered each month in excess of a daily average amount, the producer's "base", which base is the daily average of shipments of

the producer for the period of August through December of the previous year, the "base period." For milk deliveries not in excess of base, a "base price" is paid which is computed by dividing total market base milk deliveries into the remaining returns for all producer milk marketed during the month after deducting the value of the milk in excess of base. Each producer's base for the 12 months starting each February 1 is his average daily deliveries for a minimum of 122 days during the August 1–December 1 period of the preceding year.

The proponent cooperative proposed that a new producer entering the market or a producer electing to give up his base, be paid for a certain percentage of his milk during each of the first three full months of delivery at the base price and the remainder at the excess price. These percentages would be fixed for each month at a somewhat lower percentage of base and higher percentage of excess than the normal market average of all producers for the month. The average daily amount of milk paid for as base milk over the three-month period would determine the producer's daily base until a new base is established. The percentages proposed reflect the seasonal production pattern of new producers as determined from market experience. The low spring percentages are necessary if producers are to be given the option of establishing a new base in order to prevent producers having a wide seasonal variation from receiving higher payments than justified by establishing two bases each year. Also, producers are not encouraged to enter the market in the months when there is an oversupply of milk. The recommended percentages of milk deliveries to be paid for at the base price, 75 percent for January and February, 70 percent for March, 60 percent for April and July and 40 percent for May and June, are appropriate for making payments in these months to new producers and to producers who elect to establish new bases. Payments during the base period, however, should be at the market blend price. Base should be established on deliveries during the base period at 80 percent of deliveries. This would give old shippers the option of establishing a new base on 100 percent of daily average deliveries in the 5 months of August through December or establishing a short-time base at 80 percent of deliveries in any 3 months, such short-time base to apply for the entire year following the next February 1.

In the Muskegon market the months of lowest production in relation to fluid milk sales are normally October, November, December and January. The base period proposed includes August and September which are usually months of more plentiful supply than are January and February, and does not include January. These months appear to have been selected to offset the lag in production responses which require the stimulus to fall and winter production to become effective some months in advance of the period of shortest production in relation to market needs. A base period extending through January and February would tend to result in higher production in the spring months of oversupply. It is concluded that the proposed base-forming period should be adopted and that deliveries for only 122 days during the period be required. This would allow a producer starting delivery not later than September 1 to establish a base on 100 percent of deliveries for 4 months, and for limited lapses in delivery during the period by those who ship for 5 months.

A proposal that bases be reduced by the difference between the average base period deliveries and 90 percent of the previous base was the result of long experience in the market which has shown that such an adjustment eliminates most cases of inequity and dissatisfaction because of reductions in base due to accident, disease, weather, feed quality and other conditions more or less beyond the control of the producer.

A period of one month is allowed following the end of the base period to compute new bases. Every producer (except those who have been on the market less than 3 months) receives a new base on February 1 computed as the average of daily deliveries during the base forming months, or 80 percent of average daily deliveries in 3 months.

It is provided that all milk be considered as base milk and be paid for at a uniform price until bases have been established by deliveries during the first base period after the order becomes effective. This, of course, would not prevent a cooperative from repooling the returns for milk of its members and making payments on such base and excess plan as it may elect.

Rules have been provided for the handling of bases under certain circumstances. It is provided that any producer who fails to deliver milk to a handler for 45 consecutive days shall lose his base.

(c) *Producer butterfat differential.* The butterfat differential to be paid producers for each one-tenth of one percent that the butterfat content of the milk they deliver during the month is above or below 3.5 percent should be computed by multiplying the price of 92-score butter at Chicago by 1.15 and dividing the result by 10. It appears that this butterfat differential will result in a supply of producer milk of satisfactory butterfat test for the needs in the market.

This differential is at essentially the same rate as that proposed by producers. Their proposal called for a differential of 7 cents in butter prices ranging from 60 to 65 cents, with a one-half cent increase or decrease in the differential for each 5 cents change in butter prices. The base rate of their proposed differential is 1.12 times the butter price and changes are at the rate of 1.00.

(8) *Administrative provisions.*—(a) *Administrative assessments.* The act provides that the costs of administering a milk marketing order shall be financed by assessments on handlers subject to the order. An assessment of 4 cents per hundredweight of milk received from producers was proposed for this purpose.

As the order was originally proposed, there would have been only negligible quantities of other source milk sold for fluid purposes in the marketing area and the assessment could have been confined to producer milk. However, milk sold by handlers who have significant sales in the area but less than the 10 percent required for pool plant status will be considered as other source milk. The market administrator will necessarily audit their records and check test products sold by such handlers to the same extent as for the pool plants which receive milk from producers as defined under the order. In fact, he will probably incur more expense in proportion to the volume of milk sold in the area.

It is concluded that the administrative assessment of 4 cents per hundredweight of milk should apply to other source milk sold as Class I in the marketing area as well as to milk received from producers.

(b) *Market services.* To verify payments to producers at required rates, it is necessary to determine that butterfat tests and weights are accurate. To promote orderly marketing and encourage the production of an adequate supply of milk of satisfactory quality, it is necessary to furnish information regarding the market to individual producers. The cost of these market services should be paid by the producers who receive the benefits. Cooperative associations may be performing these services for members. It is provided, therefore, that in making payments to producers who are members of cooperatives determined by the Secretary to be performing such services, handlers shall be required to deduct from payments to producers and pay to the cooperative such amounts as are authorized by the members of the cooperative. In the case of producers who are not receiving such services from their cooperative, the service should be performed by the market administrator with funds provided by a deduction from payments to such producers. It is provided, therefore, that a deduction of 7 cents per hundredweight be made from payments to producers not receiving market services from a cooperative of which they are members and paid to the market administrator to be used for performing such services, and that this rate of 7 cents may be lowered by the Secretary if experience proves a lesser amount to be sufficient.

(c) *Other administrative provisions.* The other provisions cover administrative procedures necessary to carry out the pricing and payment requirements of the order, and for the liquidation of accounts in the event of suspension or termination of the order. Appointment of a market administrator is provided for and his powers and duties are prescribed. The computations to be made by the market administrator in determining class prices, the uniform price and the base price are set forth. A producer-equalization account is provided and the method of determining payments due to and from this account outlined so that each handler's payments to or receipts from this account, together with his payments to producers or cooperatives for milk will equal the value of his producer milk at the class prices. Handlers are required to permit verification by audit of all utilization of milk and milk products. Handlers are required to preserve all necessary records

to show receipts, utilization and payments for a period of 3 years. This is considered long enough to allow for all necessary verification and at the same time not burden handlers with an unreasonable volume of old records. Records involved in any litigation, however, must be retained until released by the market administrator.

The termination of any obligation of a handler regarding any payment required by the order or of the market administrator to pay any handler is provided at the end of the 2 years. Exceptions in the case of handler obligations are made in cases of notification of the obligation by the market administrator, failure or refusal of a handler to submit records, or transactions involving fraud or willful concealment of facts. A definite date for terminating obligations prevents the filing of claims which might extend back many years and involve substantial amounts. The resulting uncertainty could cause serious inequities and endanger the stability of the market. Handlers cannot always be forewarned as to contingent liabilities and it is extremely difficult and burdensome for them to make adequate provision therefor by setting up reserves or by taking other precautionary measures. It is concluded that in general a period of 2 years is a reasonable time in which the market administrator should complete his audits and render billings for money due under the order.

Payments to producers have customarily been made on the 15th of the month following that in which the milk was received. It is considered desirable to continue this practice, as a shorter time is impractical considering the necessary reports and computations to be made. On the other hand, producers should not be required to wait longer than 15 days when payment can be made within that time. Dates specified for announcement of class prices, submission of handler reports, announcement of uniform prices and equalization fund obligations are so set as to permit payments to producers by the 15th of the following month.

(9) *Other provisions.* Producers are deprived of the use of money rightfully belonging to them if a handler refuses to pay an obligation when due. It is provided therefore that an added charge of one-half percent per month be added to overdue accounts which will compensate producers for being deprived of money due them and also remove the advantage which would accrue to a handler if he could delay payments and have the use of money due to producers at no cost.

To avoid the application of two or more Federal orders to the handling of the same milk, it is provided that if the Secretary determines that a larger proportion of Class I milk is marketed under the pricing and payment provisions of any other Federal milk marketing order, it shall be exempt from all except the reporting and auditing provisions of this order.

General findings. (a) The proposed marketing agreement and the order and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of a producer cooperative association, certain other producers, and milk distributors in the area. The briefs contained statements of facts, proposed findings and conclusions, and arguments with respect to the provisions of the proposed order. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistant with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

Recommended marketing agreement and order. The following order is recommended as the appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order:

DEFINITIONS

§ 985.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 601 et seq.).

§ 985.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States, authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 985.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 985.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 985.5 *Muskegon, Michigan, marketing area.* "Muskegon, Michigan, marketing area" referred to in this subpart as the "marketing area" means all territory, including incorporated municipalities, within Muskegon County and within the outer boundaries of the following townships of Ottawa County, in the State of Michigan:

Chester.	Polkton.
Crockery.	Spring Lake.
Grand Haven.	

§ 985.6 *Pool plant.* "Pool plant" means a plant (except a plant receiving milk from dairy farmers whose payments for milk are subject to the provisions of another Federal milk marketing agreement or order and which is exempted pursuant to § 985.101) at which milk is received directly from dairy farmers and from which during the month an amount of milk equal to 10 percent or more of the total milk received from dairy farmers at such plant is disposed of in the marketing area as Class I products other than to another pool plant.

§ 985.7 *Handler.* "Handler" means:

(a) A person who operates a plant in which milk is pasteurized or packaged and from which Class I milk is disposed of in the marketing area.

(b) A cooperative association with respect to milk customarily received by a handler as described under paragraph (a) of this section, which is diverted to a non-handler for the account of the association.

§ 985.8 *Producer.* "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, or to any other plant by diversion from a pool plant for the account of a handler.

§ 985.9 *Producer-handler.* "Producer-handler" means a person who is a handler and who produces milk, but receives no milk from other producers or from a cooperative association.

§ 985.10 *Other source milk.* "Other source milk" means all skim milk and butterfat in any form received at a handler's plant other than from producers or from a pool plant.

§ 985.11 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers, duly organized as such under the laws of any State, which the Secretary determines:

(a) Is qualified under the standards set forth in the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has fully authority in the sale of milk of its members; and

(c) Is engaged in making collective sales or marketing milk or its products for its members.

§ 985.12 *Base.* "Base" means a quantity of milk, expressed in pounds per day, determined for each producer as provided in § 985.70.

§ 985.13 *Base milk.* "Base milk" means milk delivered by a producer each month which is not in excess of his base multiplied by the number of days on which milk is delivered during the month, and all milk delivered by a producer prior to February 1, 1953.

§ 985.14 *Excess milk.* "Excess milk" means milk delivered by a producer each month in excess of his base milk.

MARKET ADMINISTRATOR

§ 985.20 *Designation.* The agency for the administration of this subpart shall be a market administrator, selected by the Secretary who shall be entitled to such compensation as may be determined by, and shall be subject to removal by, the Secretary.

§ 985.21 *Powers.* The market administrator shall have the following powers with respect to this subpart:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violation;

(c) To make rules and regulations to effectuate its terms and provisions;

(d) To recommend amendments to the Secretary.

§ 985.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 985.85:

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 985.86, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided in this subpart, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 985.30 and § 985.31, or (2) payments pursuant to § 985.80 and § 985.83;

(g) Calculate a base for each producer in accordance with § 985.70 and advise the producer and the handler receiving the milk of such base;

(h) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(i) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this subpart; and

(j) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th working day of each month, the minimum class prices for the preceding month computed pursuant to §§ 985.51 and 985.52, and the handler butterfat differential computed pursuant to § 985.53, and

(2) On or before the 10th working day of each month the uniform price, the price for base milk and the price for excess milk for the preceding month, computed pursuant to §§ 985.62, 985.63, and 985.64, and the producer butterfat differential computed pursuant to § 985.81.

REPORTS, RECORDS AND FACILITIES

§ 985.30 *Monthly reports of receipts and utilization.* On or before the 5th working day of each month, each handler who operates a pool plant shall report to the market administrator, for the preceding month, in the detail and on forms prescribed by the market administrator, the receipts at his pool plant from each of the following sources and the quantities of butterfat and skim milk contained in such receipts; the utilization of such receipts; and such other information with respect to such receipts and utilization as the market administrator may prescribe:

(a) All producer milk received, including diverted producer milk;

(b) All skim milk and butterfat in any form received from each other handler; and

(c) All other source milk received except any non-fluid milk product which is disposed of in the same form as received.

§ 985.31 *Other reports.* (a) Each producer-handler and each handler who does not operate a pool plant shall make reports at such time and in such manner as the market administrator may request.

(b) On or before the 20th day of each month each handler who received milk from producers shall report his producer payroll for the preceding month which shall show:

(1) The pounds of base milk and pounds of excess milk received from each producer, and the percentage of butterfat contained therein;

(2) The amount and date of payment to each producer, or to a cooperative association; and

(3) The nature and amount of each deduction or charge involved in the payments referred to in subparagraph (2) of this paragraph.

§ 985.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 985.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handled for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That, if within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 985.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received at a pool plant (a) in milk from producers or from a cooperative association, (b) in any form from other handlers and (c) in other source milk required to be reported pursuant to § 985.30, shall be classified (separately as skim milk and butterfat), in the classes set forth in § 985.41.

§ 985.41 *Classes of utilization.* Subject to the conditions set forth in §§ 985.42 and 985.43 the classes of utilization shall be as follows:

(a) Class I utilization shall be all skim milk and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, butterfat, flavored milk, sweet or sour cream, and (2) not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat, (1) used to produce ice cream, ice cream mix, or cottage cheese, or disposed of as whole or skimmed condensed or evaporated milk (sweetened or unsweetened) in bulk or in hermetically sealed cans, cheese, dried whole milk, non-fat dry milk solids, or butter; (2) in actual shrinkage of skim milk and butterfat in milk received from producers, but not to exceed 2 percent of such receipts; and (3) in actual shrinkage in other source milk; and (4) all skim milk dumped or disposed of as livestock feed.

§ 985.42 *Shrinkage.* (a) If producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and in other source milk.

(b) Shrinkage on producer milk shall be computed on that quantity of milk received directly from producers. Shrinkage shall be computed on diverted producer milk at the plant receiving such milk.

§ 985.43 *Transfers.* (a) Skim milk and butterfat disposed of from a pool plant to another pool plant in the form of milk, skim milk or cream shall be Class I utilization unless Class II utilization is indicated by the operators of both plants in their reports submitted pursuant to § 985.30: *Provided,* That in no event shall the amount so classified as Class II be greater than the amount of producer

milk used in such class in the pool plant of the transferee handler after allocating other source milk in such plant in series beginning with the lowest priced utilization.

(b) Skim milk and butterfat moved in the form of milk, skim milk or cream from a pool plant to a handler described in § 985.101 or to a plant not a pool plant located not more than 50 miles by shortest highway distance, as determined by the market administrator, from the Muskegon County Court House, shall be Class I utilization unless all of the following conditions are met:

(1) Class II utilization is indicated by the operator of the pool plant in his report submitted pursuant to § 985.30.

(2) The operator of such nonpool plant in the month of such movement had actually used an equivalent amount of skim milk and butterfat in Class II, or moved such amount to another nonpool plant which meets the requirements of subparagraph (3) of this paragraph and utilized in the month an equivalent amount of skim milk and butterfat in Class II.

(3) The operator of the nonpool plant maintains books and records which are made available for examination upon request by the market administrator and which are adequate for the verification of such Class II utilization.

(c) Skim milk and butterfat moved in the form of milk, skim milk or cream from a pool plant to a plant not a pool plant and located more than 50 miles by shortest highway distance, as determined by the market administrator, from the Muskegon County Court House shall be Class I utilization.

§ 985.44 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 985.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I and Class II utilization for each handler.

§ 985.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage allowed pursuant to § 985.41 (b) (3);

(b) Subtract from the total pounds of buterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk;

(c) Subtract from the pounds of butterfat remaining in each class, the pounds of butterfat received from other handlers in such classes pursuant to § 985.43 (a); and

(d) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section;

(e) If the remaining pounds of butterfat in both classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 985.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in § 985.46.

§ 985.48 *Determination of average butterfat content.* Determine the weighted average butterfat content of the Class I and Class II milk computed pursuant to §§ 985.46 and 985.47.

MINIMUM PRICES

§ 985.50 *Basic formula price.* The basic formula price to be used in determining the price per hundredweight of Class I utilization shall be the highest of the prices computed pursuant to paragraphs (a), (b), (c), and (d) of this section.

(a) The average of the basic or field prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 per cent butterfat content received from farmers during the month at the the following plants or places for which prices have been reported to the market administrator or to the U. S. D. A.:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Greenville, Wis.
Borden Co., Black Creek, Wis.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Jefferson, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values computed pursuant to subparagraphs (1) and (2) of this paragraph;

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the U. S. D. A. during the month; subtract 3 cents, add 20 percent thereof and multiply by 3.5.

(2) From the simple average as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the U. S. D. A., deduct 5.5 cents and then multiply by 8.2.

(c) The price per hundredweight resulting from the following formula:

(1) Multiply by 8.53 the average of the daily prices per pound of cheese at Wisconsin Primary Markets ("Cheddars", f. o. b. Wisconsin assembling points, cars or truckloads) as reported by the U. S. D. A. during the delivery period;

(2) Add 0.902 times the price per pound of butter as described in paragraph (b) (1) of § 985.50; and

(3) Subtract 34.3 cents.

(d) The average of the prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator:

Carnation Milk Co., Sparta, Mich.
Saranac Milk Products Co., Saranac, Mich.
Pet Milk Co., Wayland, Mich.

§ 985.51 *Class I milk price.* (a) The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class I utilization shall be the basic formula price plus $1.10.

§ 985.52 *Class II milk price.* The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from a cooperative association, during the month, which is classified as Class II utilization, shall be the higher of the prices as computed by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) The price per hundredweight computed as follows:

(1) Multiply the average price per pound of butter as described in paragraph (b) (1) of § 985.50 by 1.2 and then by 3.5.

(2) Multiply by 8.2 the simple average of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the United States Department of Agriculture.

(3) From the sum of the amounts determined under subparagraphs (1) and (2) of this paragraph deduct 62.6 cents.

(b) The price per hundredweight pursuant to § 985.50 (d).

§ 985.53 *Handler butterfat differentials.* If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to §§ 985.51 and 985.52 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of one percent that such average butterfat content is below 3.5 percent, an amount computed by multiplying the average price of butter as described in § 924.50 (b) (1) by the appli-

cable factor listed below and dividing the result by 10:

(a) Class I milk: Multiply such price by 1.25;

(b) Class II milk: Multiply such price by 1.15.

DETERMINATION OF UNIFORM PRICE

§ 985.60 *Handler operating a plant which is not a pool plant.* Each handler who operates a plant which is not a pool plant during the month shall pay to the market administrator for the producer settlement fund an amount computed by multiplying the hundredweight of milk disposed of from such plant in the marketing area as Class I by the difference between the Class I and Class II prices for the month, adjusted by the butterfat differentials provided in § 985.53 to the average butterfat test of all milk received at such plant from dairy farmers.

§ 985.61 *Computation of value of producer milk for each handler.* The value of producer milk received during the month by each handler who operates a pool plant shall be a sum of money computed by the market administrator by multiplying by the applicable class price, adjusted pursuant to § 985.53, the total combined hundredweight of skim milk and butterfat received from producers allocated to each class pursuant to § 985.48, adding together the resulting amounts, and if such handler has a utilization greater than has been accounted for as received from all sources, add an amount computed by multiplying any such excess utilization classified pursuant to § 985.46 (e) and § 985.47 by the applicable class prices.

§ 985.62 *Computation of the 3.5 percent value of all producer milk.* For each month, the market administrator shall compute the 3.5 percent value of producer milk by:

(a) Combining into one total the individual values of milk of all handlers computed pursuant to § 985.61, adjusted by any charges or credits pursuant to § 985.90 (a) and (b).

(b) Adding, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtracting if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 985.81 multiplied by 10.

(c) Adding not less than one-half of the unobligated balance in the producer-equalization fund.

§ 985.63 *Uniform price.* For each month the uniform price shall be computed by: (a) Dividing the amount computed pursuant to § 985.62 by the hundredweight of milk received from producers represented by the values included in § 985.62 (a); and (b) subtracting not less than 4 cents or more than 5 cents.

§ 985.64 *Excess milk price.* For each month the excess milk price shall be the price of Class II utilization determined pursuant to § 985.52, rounded off to the nearest full cent.

§ 985.65 *Computation of the base milk price.* (a) Multiply the total pounds of excess milk and milk to be paid for at the excess milk price pursuant to § 985.70 (b) by the excess milk price for the month.

(b) Multiply the total amount of milk to be paid for at the uniform price by the uniform price for the month.

(c) Subtract the total values arrived at in paragraphs (a) and (b) of this section from the total 3.5 percent value of all producer milk arrived at in § 985.62;

(d) Divide the resultant value by the total hundredweight of base milk and milk to be paid for at the base price pursuant to § 985.70 (b); and

(e) Subtract not less than 4 cents nor more than 5 cents. The resultant hundredweight price shall be the price of base milk of 3.5 percent butterfat content received at pool plants described in § 985.6.

§ 985.66 *Notification.* On or before the 10th day after the end of each month the market administrator shall notify each handler of:

(a) The amounts and values of his milk in each class and the total of such amounts and values;

(b) The base of any producer delivering milk to the handler which was not used in making payments for the previous month.

(c) The amount due such handler from the producer-equilization fund or the amount to be paid by such handler to the producer-equalization fund, as the case may be; and

(d) The totals of the minimum amounts to be paid by such handler pursuant to §§ 985.80, 985.83, 985.85, 985.86, and 985.90.

BASE RULES

§ 985.70 *Determination of base.* (a) A producer who delivered milk on at least 122 days during the period August 1 through December 31, inclusive, shall have a base computed by the market administrator to be applicable, subject to paragraph (c) of this section, for the 12 months' period beginning the following February 1, equal to his daily average milk deliveries from the date on which milk was first delivered in the period to the end of such period: *Provided,* That a producer who had a base previous to August 1, and whose average of daily deliveries for the August 1-December 31 period is less than such base shall have a base computed by subtracting from his previous base any amount by which 90 percent of his previous base exceeds such average of daily deliveries.

(b) A producer who has no base by reason of having delivered less than 3 full months shall be paid, until such time as he has been a producer 3 full months, the uniform price in each of the months of August through December and in other months the price applicable to base milk for the following percentages of his milk deliveries and the price applicable to excess milk for the remainder of his deliveries: 75 percent for January and February, 70 percent for March, 60 percent for April and July, and 40 percent for May and June. At the conclusion of the first three full months' delivery a base shall be established in the following manner: Multiply the total deliveries in the months of August through December by 0.8, in January and February by 0.75, in March by 0.7, in April and July by 0.6, and in May and June by 0.4. Add the amounts so computed and divide by the number of days in which milk was delivered during the three months.

(c) A producer with a base, by notifying the market administrator that he relinquishes such base, may establish a new base pursuant to paragraph (b) of this section once during the 12-month period ending December 31, the period for establishing a new base to begin the first day of the month in which such notification is received by the market administrator.

(d) From the effective date of the subpart until bases are established pursuant to this section, all milk delivered by producers shall be considered to be base milk.

§ 985.71 *Application of bases.* (a) A base shall apply to deliveries of milk by the producer for whose account milk was delivered during the base period and upon death may be transferred to a member or members of the deceased producer's immediate family;

(b) Bases may be transferred under the following conditions upon written notice by the holder of the base to the market administrator on or before the last day of the month that such base is to be transferred:

(1) Upon retirement or entry into military service of a producer, the entire base may be transferred to a member or members of his immediate family.

(2) Bases may be held jointly and if such joint holding is terminated the bases may be transferred as specified in writing to the market administrator by the joint holders to a person or persons who maintain a dairy herd or herds on the same farm.

(c) A producer who does not deliver milk to a handler for 45 consecutive days shall forfeit his base.

PAYMENT FOR MILK

§ 985.80 *Time and method of payment.* On or before the 15th day after the end of each month each handler who received milk from producers or from a cooperative association shall pay for milk received during such month to each producer, or to a cooperative association for milk received from producers for the account of such association, the uniform price as provided in § 985.70 (b), or the base price for base milk and for milk to be paid for at the base price pursuant to § 985.70 (b) and the excess price for excess milk and milk to be paid for at the excess price pursuant to § 985.70 (b), adjusted by the butterfat differential pursuant to § 985.81: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 985.84 he shall not be deemed to be in violation of this section if he reduces uniformly to all producers and cooperative associations his payments per hundredweight by a total amount not in excess of the reduction in payments due from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on

or before the date for making payments pursuant to this section next following that on which such balance of payment is received from the market administrator.

§ 985.81 *Producer butterfat differential.* In making payments pursuant to § 985.80, the uniform price, base price and excess price shall be increased or decreased for each one-tenth of one percent of butterfat content in the milk received from each producer or a cooperative association above or below 3.5 percent, as the case may be, by an amount computed by multiplying the average price of butter as described in § 985.50 (b) (1) by 1.15 and dividing the result by 10.

§ 985.82 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to § 985.83 and out of which he shall make all payments pursuant to § 985.84.

§ 985.83 *Payments to the producer-equalization fund.* On or before the 13th day after the end of each month, each handler: (a) Whose value of milk is required to be computed pursuant to § 985.61 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 985.80; (b) who is required to make payment pursuant to § 985.60 shall pay such amount to the market administrator.

§985.84 *Payments out of the producer-equalization fund.* On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 985.61 is less than the total minimum amount required to be paid by him pursuant to § 985.80, less any unpaid obligations of such handler to the market administrator pursuant to § 985.83: *Provided,* That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 985.85 *Expense of administration.* As his pro rata share of the expense of administration of this subpart, each handler shall pay to the market administrator on or before the 13th day after the end of each month four cents per hundredweight, or such amount not exceeding four cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of milk from producers.

§ 985.86 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 985.80 for milk received from each producer at a plant not operated by a cooperative association of which such producer is a member, shall deduct seven cents per hundredweight, or such amount not exceeding seven cents per hundredweight as the Secretary may prescribe, with respect to all such milk received during the month and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 985.80 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

ADJUSTMENT OF ACCOUNTS

§ 985.90 *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall notify such handler promptly of any such amount due; and payment thereof shall be made on or before the next date, following the 5th day after such notice, for making payment set forth in the provision under which such error occurred.

§ 985.91 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 985.83, 985.85, 985.86, and 985.90 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

APPLICATION OF PROVISIONS

§ 985.100 *Milk caused to be delivered by cooperative associations.* Milk referred to in this subpart as received from producers by a handler shall include milk of producers caused to be delivered to such handlers by a cooperative association.

§ 985.101 *Handler exemption.* A handler who operates a plant located outside the marketing area from which an average of less than 600 pounds of Class I milk per day is disposed of during the delivery period on a route(s) operating wholly or partly within the marketing area and from which no milk is transferred to other handlers, or a handler whom the Secretary finds is subject, during the delivery period, to another Federal order and whose disposition of Class I milk in the other Federal marketing area exceeds that in the Muskegon marketing area, shall be exempted for such delivery period from all provisions of this subpart except §§ 985.31, 985.32, and 985.33.

§ 985.102 *Producer-handler.* A producer-handler shall be exempt from all provisions of this subpart except that he shall make reports to the market administrator at such time and in such manner as the market administrator may request.

TERMINATIONS OF OBLIGATIONS

§ 985.110 *Termination of obligations.* (a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or associations, or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books or records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this subpart to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the month during which the milk

involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 985.120 *Effective time.* The provisions of this subpart, or of any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 985.121 *When suspended or terminated.* The Secretary shall, whenever he finds that this subpart, or any provision of this subpart, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or any such provision of this subpart.

§ 985.122 *Continuing obligation.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 985.123 *Liquidation.* Under the suspension or termination of the provisions of this subpart, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 985.130 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 985.131. *Separability of provisions.* If any provision of this subpart, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this subpart, to other persons or circumstances shall not be affected thereby.

Filed at Washington, D. C., this 17th day of June 1952.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator.

[F. R. Doc. 52-6775; Filed, June 19, 1952; 8:55 a. m.]

NOTICES

CIVIL AERONAUTICS BOARD

[Dockets Nos. 540, 541]

EMPRESA DE TRANSPORTES AEROVIAS BRAZIL, S. A.

NOTICE OF HEARING

In the matter of the application of Empresa de Transportes Aerovias Brazil, S. A., under section 402 of the Civil Aeronautics Act of 1938, as amended, for an amendment of its foreign carrier permit so as to add San Juan, Puerto Rico, and Ciudad Bolivar, Venezuela as intermediate points on its route.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 402, 1001, and 1102 of said act, that public hearing in the above-entitled proceeding is assigned to be held on July 8, 1952, at 10:00 a. m. e. d. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Walter W. Bryan.

Without limiting the scope of the issues presented by said application, particular attention will be directed to the following matters and questions:

1. Whether the proposed air transportation will be in the public interest.

2. Whether the applicant is fit, willing, and able to perform the proposed transportation and to conform to the provisions of the act and the rules, regulations, and requirements of the Board thereunder.

3. Whether the authorization of the proposed transportation is consistent with any obligation assumed by the United States in any treaty, convention, or agreement in force between the United States and Brazil.

Notice is further given that any person desiring to be heard in this proceeding must file with the Board, on or before July 8, 1952, a statement setting forth the issues of fact or law raised by said application which he desires to controvert.

For further details of the service proposed and authorization requested, interested parties are referred to the application on file with the Civil Aeronautics Board.

Dated at Washington, D. C., June 17, 1952.

By the Civil Aeronautics Board.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 52-6773; Filed, June 19, 1952; 8:54 a. m.]

ECONOMIC STABILIZATION AGENCY

Office of Price Stabilization

[Ceiling Price Regulation 34, as amended, Section 20 (c) Special Order 9]

PRICES FOR EMERGENCY ROAD SERVICE SUPPLIED TO THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION, 150 VAN NESS AVENUE, SAN FRANCISCO, CALIFORNIA

Statement of considerations. The ceiling prices for emergency road service supplied to the California State Automobile Association, 150 Van Ness Avenue, San Francisco, California, by garages and service stations presently under contract with the association to supply such service are adjusted by this Special Order pursuant to section 20 (c) of Ceiling Price Regulation 34, as amended.

This section authorizes the Director of Price Stabilization to adjust ceiling prices of sellers of an essential non-retail service as to which there is a limited supply available. In order to obtain an adjustment under this section, the buyer must demonstrate that he is purchasing an essential non-retail service as to which there is a limited supply available from sellers thereof who are too numerous to make recourse by them to section 20 (b) of Ceiling Price Regulation 34, as amended, practicable. The purchaser must further demonstrate that these sellers are threatening to discontinue supplying him with such service, and in addition, the applicant must agree to absorb any price increase over his sellers' existing ceiling prices and must so state in his application. The buyer may not apply for or obtain an increase in his suppliers' ceiling prices for the service supplied to him, which would bring the proposed increased ceiling prices in excess of the price he would be required to pay to other suppliers of the same service. The buyer's application must also show the nature and extent of the sellers' direct labor and material cost increases incurred by them since their ceiling prices for that service were established. These cost increases will be considered by the Office of Price Stabilization in determining the amount of price increase which may be granted. Where practicable the purchaser must state the names and addresses of the sellers and the ceiling prices of each seller.

It appears from information submitted in the application that the association serves approximately 250,000 members in California and Nevada; that it has contracts with approximately 320 public garages and service stations to provide emergency road service to these members; that payment for this emergency road service is made by the association from membership dues and

that there are presently requests for rate increases from many contract stations. The application indicates that the supply of such service is limited; that the rates vary with the nature and the character of the area where the garage or service station is located, e. g. from a metropolitan district such as San Francisco to the sparsely settled districts of Nevada; that the increased ceiling prices for the emergency road service will not exceed the prevailing prices at which the applicant could purchase the same service and will generally be substantially less than the prevailing commercial rates; that the applicant's suppliers are threatening to discontinue supplying such service because their ceiling prices are below prevailing rates; and that the applicant has agreed to absorb any price increases and will not pass on such increases to its members.

The Director of Price Stabilization has determined from data submitted by the applicant, that the sellers of emergency road service to the applicant are too numerous to make recourse to paragraph 20 (b) of Ceiling Price Regulation 34 practicable. The increased ceiling prices reflect the direct labor and material cost increases incurred by these sellers since their ceiling prices for the service were established, and such increased prices will not be inconsistent with the purposes of the Defense Production Act of 1950, as amended.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 20 (c) of Ceiling Price Regulation 34, as amended, this Special Order is hereby issued.

1. The application of the California State Automobile Association dated September 12, 1951, for an adjustment of the ceiling prices which sellers presently under contract with the association may charge the association for emergency road service is granted as follows:

On and after the effective date of this Special Order sellers presently under contract with the California State Automobile Association, who supply emergency road service pursuant to such contract with the association, may increase their ceiling prices for sales of such service to the California State Automobile Association by an amount not to exceed 15 percent of such ceiling prices, provided that the association shall comply with the provisions of paragraph 2 of this Special Order.

2. The California State Automobile Association may pay to sellers, presently under contract with the association, for emergency road service an increased price determined under paragraph 1 of this Special Order provided that it shall absorb the increase over the former ceiling price and shall not pass on such increase in rates to its members by increasing annual dues or other forms of remuneration.

3. Copies of this order shall be provided by the California State Automobile Association to the garages and service stations to which this order is applicable. A copy of this order shall be kept at the place of business of each of these garages and service stations and another copy shall be filed by each seller of emergency road service with the appropriate District Office of the Office of Price Stabilization with which each of the garages or service stations has filed or is required to file a statement of its ceiling prices under section 18 of Ceiling Price Regulation 34.

4. All requests in the application of the California State Automobile Association not granted herein are denied.

5. All provisions of Ceiling Price Regulation 34, as amended, except as changed by the pricing provisions of the Special Order shall remain in effect.

6. This Special Order or any provisions thereof may be revoked, suspended or amended by the Director of Price Stabilization at any time.

Effective date. This order shall become effective June 13, 1952.

ELLIS ARNALL,
Director of Price Stabilization.

JUNE 13, 1952.

[F. R. Doc. 52-6654; Filed, June 13, 1952; 4:47 p. m.]

[Ceiling Price Regulation 34, as amended, Section 20 (c) Special Order 10]

PRICES FOR EMERGENCY ROAD SERVICE SUPPLIED TO AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, LOS ANGELES, CALIFORNIA

Statement of considerations. The ceiling prices for emergency road service supplied to the Automobile Club of Southern California, Los Angeles, California, by garages and service stations presently under contract with the club to supply such service are adjusted by this Special Order pursuant to section 20 (c) of Ceiling Price Regulation 34, as amended.

This section authorizes the Director of Price Stabilization to adjust ceiling prices of sellers of an essential non-retail service as to which there is a limited supply available. In order to obtain an adjustment under this section, the buyer must demonstrate that he is purchasing an essential non-retail service as to which there is a limited supply available from sellers thereof who are too numerous to make recourse by them to section 20 (b) of Ceiling Price Regulation 34, as amended, practicable. The purchaser must further demonstrate that these sellers are threatening to discontinue supplying him with such service, and in addition, the applicant must agree to absorb any price increase over his sellers' existing ceiling prices and must so state in his application. The buyer may not apply for or obtain an increase in his suppliers' ceiling prices for the service supplied to him, which would bring the proposed increased ceiling prices in excess of the price he would be required to pay to other suppliers of the same service. The buyer's application must also show the nature and extent of the sellers' direct labor and material cost increases incurred by them since their ceiling prices for that service were established. These cost increases will be considered by the Office of Price Stabilization in determining the amount of price increase which may be granted. Where practicable the purchaser must state the names and addresses of the sellers and the ceiling prices of each seller.

It appears from information submitted in the application that the club serves approximately 325,000 members in California and Nevada; that it has contracts with approximately 296 public garages and service stations to provide emergency road service to these members; that payment for this emergency road service is made by the club from membership dues and that there are presently requests for rate increases from many contract stations. The application indicates that the supply of such service is limited; that the rates vary with the nature and the character of the area where the garage or service station is located, e. g. from a metropolitan district such as Los Angeles to the sparsely settled districts of Nevada; that the increased ceiling prices for the emergency road service will not exceed the prevailing prices at which the applicant could purchase the same service and will generally be substantially less than the prevailing commercial rates; that the applicant's suppliers are threatening to discontinue supplying such service because their ceiling prices are below prevailing rates; and that the applicant has agreed to absorb any price increases and will not pass on such increases to its members.

The Director of Price Stabilization has determined from data submitted by the applicant, that the sellers of emergency road service to the applicant are too numerous to make recourse to paragraph 20 (b) of Ceiling Price Regulation 34 practicable. The increased ceiling prices reflect the direct labor and material cost increases incurred by these sellers since their ceiling prices for the service were established, and such increased prices will not be inconsistent with the purposes of the Defense Production Act of 1950, as amended.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 20 (c) of Ceiling Price Regulation 34, as amended, this Special Order is hereby issued.

1. The application of the Automobile Club of Southern California dated September 21, 1951, for an adjustment of the ceiling prices which sellers presently under contract with the club may charge the club for emergency road service is granted as follows:

On and after the effective date of this Special Order sellers presently under contract with the Automobile Club of Southern California, who supply emergency road service pursuant to such contract with the club, may increase their ceiling prices for sales of such service to the Automobile Club of Southern California by an amount not to exceed 15% of such ceiling prices, provided that the club shall comply with the provisions of paragraph 2 of this Special Order.

2. The Automobile Club of Southern California may pay to sellers, presently under contract with the club, for emergency road service an increased price determined under paragraph 1 of this Special Order provided that it shall absorb the increase over the former ceiling price and shall not pass on such increase in rates to its members by increasing

annual dues or other forms of remuneration.

3. Copies of this order shall be provided by the Automobile Club of Southern California to the garages and service stations to which this order is applicable. A copy of this order shall be kept at the place of business of each of these garages and service stations and another copy shall be filed by each seller of emergency road service with the appropriate District Office of the Office of Price Stabilization with which each of the garages or service stations has filed or is required to file a statement of its ceiling prices under section 18 of Ceiling Price Regulation 34.

4. All requests in the application of the Automobile Club of Southern California not granted herein are denied.

5. All provisions of Ceiling Price Regulation 34, as amended, except as changed by the pricing provisions of the Special Order shall remain in effect.

6. This Special Order or any provisions thereof may be revoked, suspended or amended by the Director of Price Stabilization at any time.

Effective date. This order shall become effective June 13, 1952.

ELLIS ARNALL,
Director of Price Stabilization.

JUNE 13, 1952.

[F. R. Doc. 52-6655; Filed, June 13, 1952; 4:47 p. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 54-81]

MIDDLE WEST CORP. ET AL.

ORDER APPROVING APPLICATION FOR FEES AND SERVICES

JUNE 16, 1952.

In the matter of the Middle West Corporation, Central and South West Utilities Company, and American Public Service Company, File No. 54-81.

The Commission, by order dated April 30, 1946, having approved the amended plan filed by the Middle West Corporation, a registered holding company, and its holding company subsidiaries, Central and South West Utilities Company ("Central") and American Public Service Company ("American"), under section 11 (e) of the Public Utility Holding Company Act of 1935, for the reorganization and merger of Central and American, the surviving corporation being known as Central and South West Corporation; and said order having reserved jurisdiction with respect to the reasonableness and appropriate allocation of all fees and expenses and other remunerations incurred and to be incurred in connection with the amended plan and the transactions incident thereto; and

Said amended plan having provided that the surviving corporation, Central and South West Corporation, would pay such fees and expenses as we should approve; and

The Commission, by order dated October 1, 1948, having released jurisdiction over all of the fees and expenses incurred in connection with the amended plan except for the limited purpose of determining whether any allowance should be made to Willian J. McEnery, a member of the common stockholders' committee of Central, who had theretofore filed a notice of intention to file an application requesting compensation for his services; and

William J. McEnery having filed an application requesting an allowance of $25,000 for his services and having also requested $2,900 for disbursements and liabilities incurred on behalf of the committee; and

A public hearing having been held after appropriate notice and applicant and Central and South West Corporation having waived the filing of briefs and oral argument; and the Commission having considered the record herein and having made and filed its supplemental memorandum opinion herein;

It is ordered, That the application of William J. McEnery for approval of payment to him by Central and South West Corporation of an allowance for services rendered in connection with the amended plan be, and hereby is, approved in the amount of $12,000 and denied in respect of any request in excess of that amount, and that his request for an additional allowance of $2,900 for disbursements and liabilities incurred be, and the same hereby is, denied.

It is further ordered, That Central and South West Corporation pay to William J. McEnery the amount of $12,000 for his services in connection with the amended plan.

It is further ordered, That the jurisdiction heretofore reserved in our order of October 1, 1948 as to the reasonableness and appropriate allocation of any allowance to William J. McEnery, a member of the common stockholders' committee of Central, for services rendered in connection with the amended plan and the transactions incident thereto be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 52-6755; Filed, June 19, 1952; 8:49 a. m.]

[File No. 70-2811]

GENERAL PUBLIC UTILITIES CORP. AND JERSEY CENTRAL POWER & LIGHT CO.

ORDER RELEASING JURISDICTION OVER FEES AND EXPENSES

JUNE 16, 1952.

The Commission by order dated April 29, 1952, having permitted an amended declaration of General Public Utilities Corporation, a registered holding company, and its subsidiary Jersey Central Power & Light Company ("Jersey Central") to become effective with respect to the proposed sale by Jersey Central of all its gas properties to New Jersey Natural Gas Company, and said order having reserved jurisdiction with respect to the fees and expenses incurred or to be incurred by the declarants in connection with said transaction; and

A further amendment having been filed on June 11, 1952, by Jersey Central stating that the proposed sale was consummated on June 3, 1952, and that the sale price as adjusted was $16,027,582.66; and

The record having been completed with respect to the fees and expenses incurred in said matter, including, in addition to miscellaneous expenses estimated not to exceed $10,000, the following fees for legal services: to Autenrieth & Rochester, general counsel to Jersey Central, $15,000; to Berlack & Israels, special counsel to Jersey Central, $12,500; and

The Commission, on the basis of its examination of the record, finding that the payment of said fees and expenses in the amounts proposed would not be unreasonable, and deeming it appropriate to release the jurisdiction heretofore reserved with respect thereto:

It is order, That the jurisdiction heretofore reserved with respect to the payment of fees and expenses incurred in this matter be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 52-6761; Filed, June 19, 1952; 8:51 a. m.]

[File No. 70-2873]

NEW ENGLAND POWER CO.

ORDER AUTHORIZING PROPOSED ISSUANCE AND SALE OF PRINCIPAL AMOUNT OF FIRST MORTGAGE BONDS

JUNE 16,1952.

New England Power Company ("NEPCO"), a public-utility subsidiary company of New England Electric System ("NEES"), a registered holding company, having filed with this Commission an application, pursuant to section 6 (b) of the Public Utility Holding Company Act and Rules U-23, U-42 (b) (2) and U-50 promulgated thereunder, with respect to the following proposed transactions:

NEPCO proposes to issue and sell $5,000,000 principal amount of First Mortgage Bonds, Series E, to be dated June 1, 1952, and to mature June 1, 1982. The interest rate (which will be a multiple of ⅛ of 1 percent) and the price (exclusive of accrued interest) to be paid to NEPCO (which will not be less than 100 percent nor more than 102.75 percent of the principal amount) are to be determined at competitive bidding pursuant to Rule U-50. NEPCO proposes to issue said bonds under its Indenture of Trust and First Mortgage, dated as of November 14, 1936, as supplemented from time to time, and to be supplemented by the Fourth Supplemental Indenture, dated as of June 1, 1952. Said Series E Bonds will be secured equally and ratably with the presently outstanding bonds by a first mortgage on all properties now owned or hereafter acquired by NEPCO, with certain limited exceptions.

The application states that the net proceeds from the sale of Series E Bonds, exclusive of accrued interest, will be applied by NEPCO to the reduction of its

short-term unsecured promissory notes which are presently outstanding in an aggregate amount of $17,000,000. The application further states that, prior to June 30, 1952, NEPCO expects to issue to banks $3,000,000 of additional promissory notes and during the month of June NEPCO issued to NEES 300,000 shares of common stock for an aggregate price of $7,500,000 the proceeds of which were applied by NEPCO in reduction of its then outstanding note indebtedness (File No. 70-2872).

Total fees and expenses in connection with the proposed transactions are estimated at not more than $63,000 which includes estimates for services performed, at cost, by New England Power Service Company, an affiliated service company, of $16,000, for services rendered by independent public accountants of $2,500, for services rendered by independent engineers of $3,000 and for services rendered by the Trustee under the Supplemental Indenture of $4,000.

The application further states that the Department of Public Utilities of the Commonwealth of Massachusetts, the Vermont Public Service Commission and the New Hampshire Public Utilities Commission have expressly authorized the issuance and sale of said Series E Bonds and that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NEPCO having requested that the period for the invitation of the bids, as prescribed in Rule U-50 under the act, be shortened to not less than six days and the Commission's order herein become effective forthwith upon issuance; and

The Commission finding that said application, as amended, satisfies the applicable provisions of the act and the rules thereunder, and deeming its appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted and deeming it appropriate in the public interest and in the interest of investors and consumers that its order herein becomes effective forthwith, all subject to the terms and conditions specified below:

It is ordered, Pursuant to the applicable provisions of the act and the rules thereunder, that said application, as amended, be, and the same hereby is, granted, effective forthwith, and that for the purpose of this proceeding the ten-day period for the invitation of bids, as prescribed by Rule U-50, be, and the same hereby is, shortened to a period of not less than six days, all subject, however, to the provisions of Rule U-24 and to the following terms and conditions:

(1) That the proposed issuance and sale of said bonds shall not be consummated until the results of competitive bidding shall have been made a matter of record in this proceeding and a further order entered by this Commission on the basis of the record so supplemented, which order may contain such terms and conditions, if any, as may then be deemed appropriate, jurisdiction being reserved for this purpose; and

(2) That jurisdiction be reserved with respect to the payment of all fees and expenses in connection with the proposed transactions, including fees and expenses of counsel for the successful bidders.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-6758; Filed June 19, 1952; 8:50 a. m.]

[File No. 70-2882]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

ORDER AUTHORIZING ISSUANCE AND SALE OF SHARES OF ADDITIONAL PREFERRED STOCK SUBJECT TO COMPETITIVE BIDDING

JUNE 16, 1952.

Public Service Company of New Hampshire ("Public Service"), a subsidiary company of New England Public Service Company, a registered holding company, which in turn is a subsidiary company of Northern New England Company, also a registered holding company, having filed an application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 and Rules U-20, U-22, U-23, U-24, and U-50 thereunder with respect to the following proposed transactions:

Public Service proposes to issue and sell 50,000 shares of its cumulative __ percent preferred stock, $100 par value, pursuant to the competitive bidding requirements of Rule U-50. The dividend rate and the price per share to be paid to the company (to be not less than $100 per share nor more than $102.75 per share) are to be determined by the competitive bidding.

It is stated in the filing that during the year 1952 the company contemplates the expenditure for its construction program of about $12,124,000 and that the net proceeds from the sale of the preferred stock will be used to provide a portion of the funds required for the company's construction program; and that total expenses to be incurred by Public Service in connection with the issuance and sale of the preferred stock are estimated at $33,500, of which $12,500 is for legal fees and expenses.

Orders have been issued by the New Hampshire Public Utilities Commission and Vermont Public Service Commission authorizing the issuance and sale of the additional preferred stock as proposed, subject in the case of New Hampshire Public Utilities Commission, to a further order as to price and related matters.

Public Service requests that the Commission's order herein become effective forthwith upon issuance and that the ten-day period for inviting bids, as provided in Rule U-50, be shortened to a period of not less than six days.

The Commission finding that said application, as amended, satisfies the requirements of the applicable provisions of the act and the rules and regulations thereunder, that it is not necessary to impose any terms and conditions other than as set forth below, and that it is appropriate in the public interest and in the interest of investors and consumers that the amended application, including the request to shorten the bidding period, be granted effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application as amended be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule U-24 and to the following additional conditions:

1. That the issuance and sale of said preferred stock shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in this proceeding and a further order shall have been entered by this Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate;

2. That jurisdiction be, and it hereby is reserved with respect to payment of all legal fees and expenses of counsel for Public Service and the underwriters in connection with said transaction.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-6757; Filed, June 19, 1952; 8:50 a. m.]

[File No. 70-2886]

KITTERY ELECTRIC LIGHT CO.

NOTICE OF FILING OF PROPOSED SALE BY SUBSIDIARY OF REGISTERED HOLDING COMPANY OF UNSECURED NOTES

JUNE 16, 1952.

Notice is hereby given that Kittery Electric Light Company, ("Kittery Electric"), a subsidiary company of New England Gas and Electric Association ("NEGEA"), a registered holding company, has filed an application purusant to section 6 (b) of the Public Utility Holding Company Act of 1935 and Rule U-50 promulgated thereunder with respect to the following transaction:

Kittery, all of whose outstanding capital stocks are owned by one of NEGEA's subsidiary companies, New Hampshire Electric Company, which has been granted an exemption as a holding company pursuant to section 3 (a) (1) of the act, proposes to issue and sell privately $150,000 principal amount of unsecured notes to be dated June 1, 1952, bearing interest at the rate of 4 percent per annum and to mature June 1, 1977. The notes are to be sold in equal principal amounts of $75,000 each, to Union Mutual Life Insurance Company, and Maine Savings Bank, both of Portland, Maine, at a price of 101 percent of principal amount, plus accrued interest.

The notes provide, among other things, for the issuance of additional long-term debt, subject to the limitation that aggregate long-term debt shall not exceed $250,000 plus 60 percent of the cost or fair value (whichever is less) of net property additions made subsequent to April 30, 1952, provided net earnings of the company, as defined in the notes, for the period specified therein, are at least 2½ times the annual interest charges on all long-term indebtedness to be outstanding. The notes also provide that the company will not mortgage, pledge, or create any lien on any of its property

(except for purchase-money mortgages or liens and for pledges in the usual course of business as security for loans maturing in less than one year) without securing the notes equally and ratably with all other obligations secured thereby.

In addition, the notes provide for an annual cash sinking fund payment, commencing April 15, 1952, sufficient to redeem 1½ percent of the aggregate principal amount of the issue. The notes also provide that the company will not, except with the consent of the holders thereof, declare any dividends from earned surplus existing at December 31, 1951.

Kittery will use the proceeds from the sale of the notes to reimburse its treasury for expenditures therefrom for construction and to finance future construction.

The filing states that no Federal Commission, other than this Commission, and no State Commission other than the Maine Public Utilities Commission, which has issued an order approving the proposed sale of notes, has jurisdiction over the proposed transaction.

Total expenses in connection with the proposed transaction are estimated at $2,500, including a commission of $1,500 to H. M. Payson & Co., investment bankers, for arranging the note sale, and legal fees of $250 payable to Verrill Dana Walker Philbrick & Whitehouse, counsel for the company. The filing requests that the Commission's order become effective upon issuance.

Notice is further given that any interested person may, not later than June 23, 1952, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reason or reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, the application, as filed or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 and U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-6759; Filed, June 19, 1952; 8:51 a. m.]

[File No. 70-2887]

GENERAL PUBLIC UTILITIES CORP.

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK THROUGH SUBSCRIPTION WARRANTS TO COMMON STOCKHOLDERS

JUNE 16, 1952.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("the act"), designating sections 6 (a), 7, and 12 (c) thereof and Rules U-42 and U-50 as applicable to the proposed transactions, which are summarized as follows:

GPU proposes to issue 531,949 additional shares of its authorized and unissued common stock, par value $5 per share, offering same first to the holders of its outstanding common stock by transferable subscription warrants carrying the right to subscribe for shares of such additional common stock on the basis of one share for each fifteen shares of common stock held of record. The duration of such offer, which will be approximately 16 days, the record date, and the subscription price will be supplied by amendment.

Warrants will be issued only to purchase full shares. GPU states that it will invite approximately six investment banking houses to submit written proposals to purchase for public distribution the fractional interest shares, which it estimates will aggregate about 25,000 full shares. The proceeds from the sale of such shares, less the aggregate subscription price, will be distributed ratably in lieu of fractional shares. The reoffering price of such shares will be supplied by amendment.

Up to a date to be specified by amendment, the initial stockholders may sell their subscription rights to GPU, but only in multiples of 15 rights, at a price per right which will be one-fifteenth of the difference between the last sale price of GPU common stock on the New York Stock Exchange on the date of receipt by the subscription agent of the warrant evidencing such rights, and the subscription price.

The offering will not be underwritten nor will GPU enter into any dealer-manager arrangement. GPU does propose, however, to utilize the services of security dealers, in soliciting the exercise of the warrants and in disposing of shares covered by rights purchased by GPU or not exercised by the holders prior to the expiration date. The compensation per share to be paid by GPU to the participating dealers will be specified by amendment.

During the subscription period or until such date not later than ten days thereafter as GPU may determine, participating dealers may purchase from GPU all or any part of such shares as GPU shall make available for sale with respect to rights purchased by GPU or not exercised by the holders. The purchase price to be paid to GPU by participating dealers shall be announced by GPU on the day of such purchase, and shall not be (a) in excess of the last quoted price asked for shares of GPU common stock on the New York Stock Exchange plus an amount per share to be specified by amendment, or (b) less than the higher of the last previous bid price for such stock or the subscription price. In the event any shares thus made available to participating dealers are not purchased by them within 24 hours after notice of availability, GPU may sell such shares to other persons at the price then applicable to sales by participating dealers, as determined and announced by GPU on the day of such sale.

GPU states that it may, during the subscription period and for not more than ten days thereafter, effect transactions designed to stabilize the market for the rights and shares, but that in no event will it acquire, as a result of such transactions, a net long position in excess of 53,195 shares.

GPU requests that the Commission grant an exemption from the competitive bidding requirements of Rule U-50 to the extent that such rule may be applicable to the sale of the additional common stock to participating dealers or others, and that the Commission's order herein be made effective upon issuance.

Of the net proceeds from the sale of the additional common stock, GPU states that it will use $4,000,000 to repay its bank loans incurred for the purpose of making an additional investment in the common stock of its subsidiary Metropolitan Edison Company, $5,000,000 to purchase additional common stock of another subsidiary, Pennsylvania Electric Company, and the balance to purchase additional common stock of its subsidiaries and for other corporate purposes.

Notice is further given that any interested person may, not later than June 25, 1952, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided by Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-6756; Filed, June 19, 1952; 8:50 a. m.]

[File No. 70-2890]

HEVI DUTY ELECTRIC CO.

NOTICE OF FILING REGARDING ISSUANCE OF SIX-MONTH BANK LOAN NOTE

JUNE 16, 1952.

Notice is hereby given that a declaration has been filed by Hevi Duty Electric Company ("Hevi Duty"), a non-utility company which is a subsidiary of The North American Company, a registered holding company. The declarant has designated sections 6 (a) and 7 of the act as being applicable to the proposed transaction which is summarized as follows:

The company is engaged in the business of manufacturing and selling electric furnaces and certain other electrical equipment. The increasing amount of the company's operations as a prime contractor or subcontractor on projects related to the national defense effort has resulted in expanding the company's manufacturing and sales activities to the point where additional working funds are presently required. Accordingly, the company proposes, subject to the approval of the Commission, to enter into an agreement with the Chemical Bank & Trust Company of New York for a bank loan of $300,000, such bank loan to be evidenced by an unsecured promissory note to extend for a period of six months with the privilege on the part of the company for renewal for an additional six months' period, and to bear interest at the rate of 3 percent per annum. No fees, commissions or other remuneration are to be paid to any third person in connection with negotiating the proposed transaction.

The company states that no regulatory commission other than this Commission has jurisdiction over the proposed transaction.

The declarant has requested that the Commission's order herein become effective upon issuance.

Notice is further given that any interested person may, not later than June 27, 1952, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law raised by said declaration which he desires to controvert or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time thereafter, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transaction as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-6760; Filed, June 19, 1952; 8:51 a. m.]

FEDERAL POWER COMMISSION

ORANGE AND ROCKLAND ELECTRIC CO.

NOTICE OF ORDER APPROVING DISPOSITION OF CLASSIFIED AMOUNTS

JUNE 16, 1952.

Notice is hereby given that on June 12, 1952, the Federal Power Commission issued its order entered June 10, 1952, approving and directing disposition of amounts classified in Account 100.5, electric plant acquisition adjustments in the above-entitled matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 52-6747; Filed, June 19, 1952; 8:48 a. m.]

[Docket No. G-585]

ALABAMA-TENNESSEE NATURAL GAS CO.

NOTICE OF OPINION AND ORDER

JUNE 16, 1952.

Notice is hereby given that on June 11, 1952, the Federal Power Commission issued its opinion and order entered June 10, 1952, denying application for rehearing and stay of Opinion No. 226 and order of May 1, 1952 (17 F. R. 4270), in the above-entitled matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 52-6745; Filed, June 19, 1952; 8:47 a. m.]

[Docket No. ID-289]

HERMAN A. BUSCH

NOTICE OF ORDER AUTHORIZING APPLICANT TO HOLD CERTAIN POSITIONS

JUNE 16, 1952.

Notice is hereby given that on June 12, 1952, the Federal Power Commission issued its order entered June 10, 1952, authorizing applicant to hold certain positions pursuant to section 305 (b) of the Federal Power Act in the above-entitled matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 52-6746; Filed, June 19, 1952; 8:48 a. m.]

[Project No. 2109]

MONTANA POWER CO.

NOTICE OF APPLICATION FOR LICENSE

JUNE 16, 1952.

Public notice is hereby given that The Montana Power Company, of Butte, Montana, has filed application under the Federal Power Act (16 U. S. C. 791a-825r) for a license for constructed waterpower Project No. 2109 (known as the Morony Hydroelectric Development) located on the Missouri River approximately 12 miles northeast of Great Falls in Cascade County, Montana, and consisting of a concrete gravity type dam 872 feet long and 116 feet high; a spillway having nine tainter gates, each 24 feet high by 34 feet long; a reservoir about 4 miles long with normal water surface at elevation 2,887 feet providing a usable storage capacity of 7,800 acre-feet; two 21-foot diameter steel penstocks through the dam directly connected to the turbines; a powerhouse built integral with the dam containing two generating units, each consisting of a 31,000 horsepower turbine connected to a 25,000-kva generator; a substation; a wood-pole 110-kv transmission line approximately 7.44 miles long to the Rainbow switchyard connecting the plant to the applicant's interconnected transmission system; and appurtenant electrical facilities.

Any protest against the approval of this application or request for hearing thereon, with the reasons for such protest or request and the name and address of the party or parties so protesting or requesting, should be submitted before July 29, 1952, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 52-6744; Filed, June 19, 1952; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 27161]

MOTOR-RAIL-MOTOR RATES BETWEEN BOSTON, MASS., AND HARLEM RIVER, N. Y.

APPLICATION FOR RELIEF

JUNE 17, 1952.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: The New York, New Haven and Hartford Railroad Company and Bradley's Express.

Commodities involved: All commodities.

Between: Boston, Mass., and Harlem River, N. Y.

Grounds for relief: Competition with motor carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 52-6749; Filed, June 19, 1952; 8:48 a. m.]

[4th Sec. Application 27162]

CRANKCASE DRAININGS FROM CERTAIN POINTS TO OKLAHOMA CITY, OKLA.

APPLICATION FOR RELIEF

JUNE 17, 1952.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to his tariffs I. C. C. Nos. 3881 and 3919.

Commodities involved: Crankcase drainings (suitable only for reprocessing), in tank-car loads.

From: Kansas City and Springfield, Mo., Little Rock and North Little Rock,

Ark., Memphis, Tenn., Wichita, Kans., and points in Texas.

To: Oklahoma City, Okla.

Grounds for relief: Circuitous routes and to apply over short tariff routes rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3881, Supp. 48; F. C. Kratzmeir, Agent, I. C. C. No. 3919, Supp. 109.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 52-6750; Filed, June 19, 1952; 8:48 a. m.]

[Rev. S. O. 562, Taylor's I. C. C. Order 2]

LONG ISLAND RAIL ROAD CO.

REROUTING OR DIVERSION OF TRAFFIC

In the opinion of Charles W. Taylor, Agent, The Long Island Rail Road Company, William Wyer, Trustee, because of work stoppage, is unable to transport traffic routed over its lines.

It is ordered, That:

(a) Rerouting traffic: The Long Island Rail Road Company, William Wyer, Trustee, being unable to transport traffic in accordance with shippers' routing, because of work stoppage, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement, regardless of routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroad desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers: The carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 3:00 p. m., June 16, 1952.

(g) Expiration date: This order shall expire at 11:59 p. m., June 30, 1952, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., June 16, 1952.

INTERSTATE COMMERCE COMMISSION, CHARLES W. TAYLOR, *Agent.*

[F. R. Doc. 52-6772; Filed, June 19, 1952; 8:53 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

[Vesting Order 12697, Amdt.]

BERTHA TIETZ AND ERNA KUHN

In re: Interests in real property, mortgages, property insurance policies and claim owned by Bertha Tietz and Erna Kuhn.

Vesting Order 12697, dated January 26, 1949, is hereby amended as follows and not otherwise:

By deleting subparagraph 2 (g) from said Vesting Order 12697 and substituting therefor the following subparagraph:

2 (g) That certain debt or other obligation owing to Bertha Tietz by Title Guarantee and Trust Company, 176 Broadway, New York 7, New York, arising out of funds held for the account of Bertha Tietz, including particularly but not limited to rents and payments of interest and principal heretofore collected on account of the property described in subparagraphs 2-a through 2-d hereof, inclusive, and proceeds from certain mortgages liquidated by Title Guarantee and Trust Company, together with any and all accruals to the aforesaid debt or other obligation and any and all rights to demand, enforce and collect the same,

All other provisions of said Vesting Order 12697, and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on June 16, 1952.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 52-6767; Filed, June 19, 1952; 8:53 a. m.]

[Vesting Order 17126, Amdt.]

ANNA DE VISSER

In re: Stock owned by Anna de Visser.

Vesting Order 17126, dated January 17, 1951, is hereby amended as follows and not otherwise:

By deleting from Exhibit A, attached to and by reference made a part of said Vesting Order 17126, the certificate numbers "11599/603" set forth with respect to shares of stock of National Distillers Products Corp. and substituting therefor the numbers "115999/116003".

All other provisions of said Vesting Order 17126 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on June 16, 1952.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 52-6768; Filed, June 19, 1952; 8:53 a. m.]

[Vesting Order 18132, Amdt.]

WILHELMINE JARCK

In re: Estate of Wilhelmine Jarck, deceased. File No. D 28-13030.

Vesting Order 18132, dated July 9, 1951, is hereby amended as follows and not otherwise:

By inserting, immediately preceding the name, Richard Gugg, appearing in subparagraph 1 of said Vesting Order 18132, the words, "Richard Gogg, also known as Richard Goegg, also known as".

All other provisions of said Vesting Order 18132 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on June 16, 1952.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 52-6769; Filed, June 19, 1952; 8:53 a. m.]